

# TRADE AND ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EFTA STATES AND THE REPUBLIC OF INDIA

## PREAMBLE

The Governments of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (hereinafter referred to as "the EFTA States"), and the Government of the Republic of India (hereinafter referred to as "India"), hereinafter each individually referred to as a "Party" or collectively as the "Parties",

RECOGNISING the common intention to strengthen the links between the EFTA States on the one part and India on the other by establishing close and lasting relations;

RECALLING their respective rights and obligations under international law, including those set out in UN Charter and the Universal Declaration of Human Rights;

REAFFIRMING their commitment to pursue the objective of sustainable development, whose pillars economic development, social development and environmental protection are mutually supportive, interdependent and essential requirements of sustainable development;

DESIRING to create favourable conditions for the development and diversification of trade between them and for the promotion of commercial and economic cooperation in areas of common interest on the basis of equality, mutual benefit, and non-discrimination;

CONVINCED that this Agreement will enhance the competitiveness of their people and enterprises in global markets and create conditions encouraging economic, trade and investment relations between them;

DETERMINED to promote and further strengthen the multilateral trading system, building on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organization done at Marrakesh on 15 April 1994 (hereinafter referred to as the "WTO Agreement") and the other agreements negotiated thereunder to which all Parties are parties, thereby contributing to the harmonious development and expansion of world trade;

RECOGNISING the importance of trade facilitation in promoting efficient and transparent procedures to reduce costs and to ensure predictability for the trading communities of the Parties;

DETERMINED to implement this Agreement in furtherance of the objectives to preserve and protect the environment through sound environmental management and to promote an optimal use of the world's resources in accordance with the objective of sustainable development;

RECOGNISING that this Agreement would contribute towards alleviating poverty, create new employment opportunities, improve living standards, and ensure a large and steadily growing real income in their respective territories through the expansion of trade and investment flows, while allowing for the

optimal use of the world's resources in accordance with the objective of sustainable development;

AFFIRMING their commitment to promote the principle of transparency; ACKNOWLEDGING the importance of good corporate governance and corporate social responsibility, and affirming their commitment to encourage

their enterprises to observe the same;

REAFFIRMING the rights of their Governments to regulate and set their sustainable development policies and priorities;

HAVE AGREED to conclude the following Trade and Economic Partnership Agreement (referred to as "this Agreement"):

## Chapter 1. GENERAL PROVISIONS

## **Article 1.1. Objectives**

1. The EFTA States and India hereby establish a free trade area in accordance with the provisions of this Agreement.
2. The objectives of this Agreement are:
  - (a) to achieve the liberalisation of trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade, set out in Annex 1A to the WTO Agreement (hereinafter referred to as the "GATT 1994");
  - (b) to achieve the liberalisation of trade in services, in conformity with Article V of the General Agreement on Trade in Services, set out in Annex 1B to the WTO Agreement (hereinafter referred to as the "GATS");
  - (c) to mutually enhance investment opportunities;
  - (d) to promote competition in their economies, particularly as it relates to economic relations between the Parties;
  - (e) to provide for adequate, effective and non-discriminatory protection and enforcement of intellectual property rights;
  - (f) to develop their trade relations so as to contribute to the objective of sustainable development; and
  - (g) to contribute in this way to the harmonious development and expansion of world trade.

## **Article 1.2. Geographical Scope**

1. Except as otherwise provided elsewhere in this Agreement, this Agreement shall apply:
  - (a) in respect of India: to the territory of the Republic of India, in accordance with the Constitution of India, including its territorial waters, and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights, or exclusive jurisdiction in accordance with its law and the United Nations Convention on the Law of the Sea, and in accordance with international law;
  - (b) in respect of the EFTA States:
    - (i) to the land territory, internal waters, and the territorial sea of a Party, and the air-space above the territory of a Party, in accordance with international law; and
    - (ii) to the exclusive economic zone and the continental shelf of a Party, in accordance with international law.
2. This Agreement shall not apply to the territory of Svalbard, with the exception of trade in goods.

## **Article 1.3. Trade and Economic Relations Governed by this Agreement**

1. The provisions of this Agreement shall apply to the trade and economic relations between, on the one side, the individual EFTA States and, on the other side, India, but not to trade relations between individual EFTA States, unless otherwise provided for in this Agreement.
2. As a result of the customs union established by the Treaty of 29 March 1923 between Switzerland and the Principality of Liechtenstein, done at Bern, Switzerland shall represent the Principality of Liechtenstein in matters covered thereby.

## **Article 1.4. Relationship to other Agreements**

The Parties confirm their rights and obligations under the WTO Agreement and the other agreements negotiated thereunder to which they are a party and any other international agreements to which they are a party.

## **Article 1.5. Central, Regional and Local Government**

Each Party is fully responsible for the observance of all obligations and commitments under this Agreement, and shall take such reasonable measures as may be available to it to ensure the observance of all obligations and commitments under this Agreement by its respective regional and local governments and authorities.

## **Article 1.6. Transparency**

1. Each Party shall publish, or otherwise make publicly available, its laws, regulations, judicial decisions, administrative rulings of general application and its respective international agreements, that may affect the operation of this Agreement.
2. A Party shall promptly respond to specific questions and provide, upon request, information to the other Parties on matters referred to in paragraph 1.
3. Nothing in this Agreement shall require a Party to disclose confidential information that would be contrary to its law or would impede law enforcement, or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any economic operator.
4. In case of any inconsistency between the provisions of this Article and provisions relating to transparency in other Chapters of this Agreement, the latter shall prevail to the extent of the inconsistency.

## **Chapter 2. TRADE IN GOODS**

### **Article 2.1. Scope**

This Chapter shall apply to trade in goods between the Parties.

### **Article 2.2. Classification of Goods**

1. The classification of goods in trade between the Parties shall be as set out in each Party's respective tariff nomenclature in conformity with the International Convention on the Harmonized Commodity Description and Coding System and its Section Notes, Chapter Notes, Subheading Notes and General Rules for the Interpretation of the Harmonized System (hereinafter referred to as "HS"), as regularly amended in the framework of the World Customs Organization.
2. Each Party shall ensure that the transposition of its schedule of tariff commitments, undertaken in order to implement Annexes 2.C (Schedule of Tariff Commitments on Goods), 2.D (Schedule of Tariff Commitments on Goods), 2.E (Schedule of Tariff Commitments on Goods) or 2.F (Schedule of Tariff Commitments on Goods) in the nomenclature of the revised HS Code following periodic amendments to the HS Code, is carried out without impairing or diminishing the tariff commitments.
3. Following periodic amendments to the HS Code, the Parties shall ensure that the transposition of the Product Specific Rules set out in Appendix 2.A.1 to Annex 2.A (hereinafter referred to as "PSR") is undertaken without impairing, including rendering more stringent, the PSRs applicable upon entry into force of this Agreement.

### **Article 2.3. Rules of Origin and Methods of Administrative Cooperation**

Goods covered by this Chapter shall be eligible for preferential tariff treatment provided that they satisfy the rules of origin as set out in Annex 2.A (Rules of Origin).

### **Article 2.4. Customs Duties**

1. Customs duties include any duty or charge of any kind imposed in connection with the importation of a good, including any form of cess, surtax or surcharge in connection with such importation, but do not include:
  - (a) charges equivalent to internal taxes imposed consistently with Article I:2 of the GATT 1994;
  - (b) measures applied consistently with the provisions of Articles VI or XIX of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, as set out in Annex 1A to the WTO Agreement (hereinafter referred to as the "WTO Anti-dumping Agreement"), the Agreement on Subsidies and Countervailing Measures, as set out in Annex 1A to the WTO Agreement (hereinafter referred to as the "WTO SCM Agreement") or the Agreement on Safeguards, as set out in Annex 1A to the WTO Agreement (hereinafter referred to as the "WTO Safeguards Agreement"), or measures imposed in accordance with Article 22 of the Dispute Settlement Understanding by the WTO Dispute Settlement Body;
  - (c) fees or other charges imposed in conformity with Article VII of the GATT 1994.
2. The Parties shall apply import duties on goods originating in another Party in accordance with Annexes 2.C (Schedule of Tariff Commitments on Goods), 2.D (Schedule of Tariff Commitments on Goods), 2.E (Schedule of Tariff Commitments on Goods) or 2.F (Schedule of Tariff Commitments on Goods).
3. Where a Party's most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of

customs duty to be applied in accordance with paragraph 2 on an originating good which is classified under the same tariff line as the particular good, the good originating in the other Parties shall be eligible for that lower duty rate.

## **Article 2.5. Customs Valuation (1)**

The determination of the customs value of goods traded between the Parties shall be governed by Article VII of the GATT 1994 and Part I of the Agreement on Implementation of Article VII of the GATT 1994, set out in Annex 1A to the WTO Agreement (hereinafter referred to as "Customs Valuation Agreement").

(1) Switzerland applies customs duties based on weight and quantity rather than ad valorem duties.

## **Article 2.6. Import and Export Restrictions**

Prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be prohibited in trade between the Parties, except in accordance with Article XI of the GATT 1994, which is hereby incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 2.7. National Treatment**

The Parties shall accord each other national treatment in accordance with Article II of the GATT 1994, which is hereby incorporated and made part of this Agreement, mutatis mutandis.

## **Article 2.8. State Trading Enterprises**

The rights and obligations of the Parties concerning state trading enterprises shall be governed by Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994,

## **Article 2.9. General and Security Exceptions**

For the purposes of this Chapter, Articles XX and XXI of the GATT 1994 are hereby incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 2.10. Balance of Payments**

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.
2. The rights and obligations of the Parties with regard to restrictions to safeguard the balance of payments shall be governed by Article XII of the GATT 1994.

## **Article 2.11. Trade Facilitation**

With the objective of facilitating trade between the EFTA States and India, the Parties shall, in accordance with Annex 2.B (Trade Facilitation):

- (a) simplify, to the greatest extent possible, customs procedures for trade in goods;
- (b) promote multilateral cooperation between the Parties in order to enhance their participation in the development and implementation of international conventions and recommendations on trade facilitation, in accordance with domestic laws, regulation or procedural requirements; and
- (c) cooperate on trade facilitation in the framework of the Sub-Committee on Trade Facilitation.

## **Article 2.12. Sub-Committee on Trade In Goods**

1. A Sub-Committee on Trade in Goods is hereby established, consisting of government representatives of the Parties.
2. The Sub-Committee on Trade in Goods shall consider any matter arising under this Chapter, including:
  - (a) monitoring and review of measures taken and implementation of commitments under this Chapter including its

Annexes, except for Annexes 2.A (Rules of Origin) and 2.B (Trade Facilitation);

(b) exchange of information and review of developments;

(c) preparation of technical amendments, including HS updating, and assisting the Joint Committee;

(d) preparation of recommendations and reports to the Joint Committee as necessary;

(e) to the extent possible, promptly seeking to address tariff and non-tariff barriers, if not covered by any other Sub-Committee under this Agreement;

(f) addressing issues relating to the administration and operation of bilateral tariff rate quotas;

(g) exchanging import statistics annually which shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of another Party benefitting from preferential duty treatment under this Agreement, as well as those that received non-preferential treatment; and

(h) any other matter referred to it by the Joint Committee.

3. The Sub-Committee on Trade in Goods shall act by consensus.

4. The Sub-Committee on Trade in Goods shall meet at least every two years or more frequently if so agreed by the Parties. The meetings of the Sub-Committee on Trade in Goods shall be chaired jointly by an EFTA State and India.

5. The Parties shall examine any difficulties that might arise in trade in goods between them and shall endeavour to seek appropriate solutions through dialogue and consultations.

## **Chapter 3. TRADE REMEDIES**

### **Article 3.1. Subsidies and Countervailing Measures**

1. The rights and obligations of the Parties relating to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO SCM Agreement, except as provided for in paragraphs 2 and 3.

2. Before initiating a countervailing investigation, a Party shall afford another Party concerned adequate opportunity for consultations with the aim of seeking a mutually acceptable solution. The consultations shall be held as soon as possible, but no less than 7 days from the receipt of the invitation. The invitation shall be communicated through channels that allow a record of the communication, including registered post, courier, or electronic transmission. A Party may continue an investigation if no mutually acceptable solution is reached within 21 days from the receipt of the invitation, unless the Parties concerned agree to continue the consultations.

3. If a Party takes a decision to impose a countervailing measure, that Party shall apply the "lesser duty" rule by imposing a duty which is less than the subsidy margin, when such lesser duty would be adequate to remove the injury to the domestic industry.

4. No Party shall have recourse to Chapter 12 (Dispute Settlement) for any matter arising under this Article.

### **Article 3.2. Anti-dumping**

1. Subject to paragraphs 2 to 12, the rights and obligations of the Parties in respect of the application of anti-dumping measures shall be governed by Article VI of the GATT 1994 and the WTO Anti-dumping Agreement.

2. The Parties agree not to take such measures in an arbitrary or protectionist manner. When a Party has accepted a properly documented application and before initiating an investigation under the WTO Anti-dumping Agreement, that Party shall notify in writing another Party whose goods are allegedly being dumped 10 days in advance of initiating the investigation and provide it with the full text of such application. As soon as possible and no later than 10 days from receipt of the notification of the receipt of the application, the exporting Party may request pre-initiation consultations with the importing Party, with the aim to clarify all possible concerns regarding the matters referred to in the application and arriving at a mutually acceptable solution. (2)

3. The existence of margin of dumping in an original investigation or in a review may normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions for the good as a whole.

4. When anti-dumping margins are established, assessed or reviewed under Articles 2, 9.3, 9.5, and 11 of the WTO Anti-dumping Agreement, regardless of the comparison basis under Article 2.4.2 of the WTO Anti-dumping Agreement, all individual margins, whether positive or negative, shall be counted toward the average.
5. Where originating goods are subject to an anti-dumping investigation, the export price of such goods before adjustment for fair comparison, in accordance with Article 2.4 of the WTO Anti-dumping Agreement, shall be based on the value which appears in relevant documents, including the certificate of origin for the goods.
6. If the investigating authority of the importing Party determines that the value referred to in paragraph 5 is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed in accordance with Article 2.3 of the WTO Anti-dumping Agreement.
7. An individual margin of dumping for an exporter or producer shall be determined with respect to all export transactions during a certain time-period, subject to Article 2.4.2 of the WTO Anti-dumping Agreement, which in no case shall be less than six consecutive months.
8. If a Party takes a decision to impose an anti-dumping duty pursuant to paragraph 1, that Party shall apply the "lesser duty" rule by imposing a duty which is less than the dumping margin, when such lesser duty would be adequate to remove the injury to the domestic industry.
9. Where an anti-dumping investigation of an importing Party with respect to goods from another Party is terminated with negative final determination, that importing Party shall not initiate an investigation on the same goods within one year from the termination of the previous investigation.
10. Notwithstanding paragraph 9, the investigating authority of the importing Party may initiate an investigation in an exceptional circumstance. If an investigation is initiated in such a case, the authorities shall explain the exceptional circumstance which warrants initiation in the notice of initiation.
11. 5 years from the entry into force of this Agreement, the Parties shall review the provisions of this Article in the Joint Committee. The Parties shall thereafter conduct biennial reviews of the provisions in the Joint Committee.
12. No Party shall have recourse to Chapter 12 (Dispute Settlement) for any matter arising under this Article.

(2) It is understood that investigations may be undertaken in parallel with ongoing consultations and that in the absence of a mutually acceptable solution each Party retains its rights and obligations under Article VI of the GATT 1994 and the WTO Anti-dumping Agreement, subject to paragraphs 3 to 12.

### **Article 3.3. Global Safeguard Measures**

1. This Agreement shall not confer any additional rights or impose any additional obligations on the Parties with regard to actions taken pursuant to Article XIX of the GATT 1994 and the WTO Safeguards Agreement, except that a Party taking a safeguard measure under Article XIX of the GATT 1994 and the WTO Safeguards Agreement may, to the extent consistent with its obligations under the WTO Agreements, exclude imports of an originating good from another Party if such imports are not a substantial cause of serious injury or threat thereof.
2. No Party shall have recourse to Chapter 12 (Dispute Settlement) for any matter arising under this Article.

### **Article 3.4. Bilateral Safeguard Measure**

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any goods originating in a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive goods in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the extent necessary to remedy or prevent the injury, subject to paragraphs 2 to 14.
2. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation.
3. A Party may apply a bilateral safeguard measure only following an investigation by its investigating authority pursuant to the following:
  - (a) the investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate

means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other interested parties and to submit their views, inter alia, as to whether or not the application of a bilateral safeguard measure would be in the public interest. The investigating authority shall publish a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law including a detailed analysis of the case under investigation as well as a demonstration of the relevance of factors examined;

(b) in the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the investigating authority shall evaluate all relevant factors of an objective and quantifiable nature, having a bearing on the situation of the domestic industry, in particular, the rate and amount of the increase in imports of the originating good concerned in absolute and relative terms, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment;

(c) the determination of serious injury, or threat thereof shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the goods concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports; and

(d) any information which is by nature confidential, or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the investigating authority. Such information shall not be disclosed without permission of the Party submitting it. A Party providing confidential information may be requested to furnish non-confidential summaries thereof or, if it indicates that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the investigating authority finds that a request for confidentiality is not warranted and if the Party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the investigating authority may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

4. A Party intending to take a bilateral safeguard measure shall immediately, and in any case before taking a measure, notify the exporting Party. The notification shall contain all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the goods involved, and the proposed measure, as well as the expected duration and timetable for the progressive removal of the measure. As soon as available, the estimated date of introduction or time-period for implementing the decision shall also be notified.

5. If the conditions in paragraph 1 are met, the importing Party may take a bilateral safeguard measure consisting in:

(a) suspending the further reduction of any rate of customs duty provided for under this Agreement for the goods; or

(b) increasing the rate of customs duty for the goods to a level not to exceed the lesser of:

(i) the most-favoured-nation rate of duty applied at the time the action is taken; or

(ii) the most-favoured-nation rate of duty applied on the day immediately preceding the entry into force of this Agreement.

6. Bilateral safeguard measures shall be taken for a period not exceeding 2 years. In very exceptional circumstances, measures may be taken up to a total maximum period of 3 years. The Party intending to extend the period beyond 2 years shall make a notification to the exporting Party containing the elements listed in paragraph 3 before taking a measure.

7. The Parties concerned shall allow for consultations. Within 30 days from the notification, the Parties concerned shall examine the information provided under paragraphs 3 and 5 in the Joint Committee in order to facilitate a mutually acceptable solution of the matter.

8. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such a measure shall immediately notify the exporting Party thereof. Within 30 days from the notification, the pertinent procedures set out in paragraphs 3 to 7 shall be initiated.

9. Any provisional bilateral safeguard measures shall be terminated within 200 days from its imposition. The period of application of any such provisional measure shall be counted as part of the duration of the measure and any extension thereof, set out in paragraph 5. Any tariff increases shall be promptly refunded if the investigation described in paragraph 2 does not result in a finding that the conditions of paragraph 1 are met.

10. A Party that may be affected by a bilateral safeguard measure, or a provisional bilateral safeguard measure, shall be offered, by the Party proposing to apply the measure, adequate means of trade liberalising compensation in the form of

concessions having substantially equivalent trade effects. Compensation shall be based on the total period of application of the bilateral safeguard measure.

11. If, within the 30-day period set out in paragraph 6, the Parties concerned are unable to agree on compensation offered by the Party proposing to apply the bilateral safeguard measure, in accordance with paragraph 9, the Party against which the bilateral safeguard measure is applied may take compensatory action having trade effects equivalent to the bilateral safeguard measure for the minimum period necessary to achieve the equivalent trade effects. The compensatory action shall be immediately notified to the Party applying the bilateral safeguard measure. Such compensation described in paragraph 9 shall not be provided if the measure described in paragraph 4 is applied for up to 2 years.

12. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

13. No bilateral safeguard measure shall be applied against a particular good while a safeguard measure referred to in Article 3.3 or under the WTO Agreement on Agriculture is being applied to that good. If such a global safeguard measure is applied against a particular good, any existing bilateral safeguard measure which is applied against that good shall be terminated.

14. 5 years from the entry into force of this Agreement, and thereafter biennially, the Parties shall review in the Joint Committee whether there is a need to maintain the possibility to apply bilateral safeguard measures among them. In these reviews, the Parties may decide to terminate the application of this Article.

## **Chapter 4. SANITARY AND PHYTOSANITARY MEASURES**

### **Article 4.1. Objectives**

The objective of this Chapter is to protect human, animal and plant life and health in the territory of the Parties while facilitating trade between them, by:

- (a) ensuring full transparency as regards sanitary and phytosanitary (hereinafter referred to as "SPS") measures applicable to trade;
- (b) establishing a mechanism for the recognition of equivalence of sanitary or phytosanitary measures maintained by a Party;
- (c) recognition of the health status of each Party and applying the principle of regionalisation zoning and compartmentalisation;
- (d) further implementing the principles of the WTO SPS Agreement; using existing standards established under the World Organisation for Animal Health (hereinafter referred to as "WOAH"), the Codex Alimentarius and the International Plant Protection Convention (hereinafter referred to as "IPPC");
- (e) establishing mechanisms and procedures for trade facilitation; and improving communication, consultation and cooperation between the Parties on SPS measures.

### **Article 4.2. Affirmation of WTO SPS Agreement**

Each Party affirms its rights and obligations with respect to the other Parties under the WTO SPS Agreement. Nothing in this Agreement shall affect the rights and obligations that each Party has under the WTO SPS Agreement.

### **Article 4.3. Scope**

This Chapter shall apply to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

### **Article 4.4. Internal Harmonisation**

Each Party shall ensure that animals, animal products, plants and plant products lawfully put on the market can move freely within its territory provided that they comply with the relevant SPS requirements of the market at the point of entry.

### **Article 4.5. Competent Authorities**



1. The Parties shall exchange names, addresses and competences of their competent authorities responsible for the implementation of this Chapter.

2. In accordance with Article 4.16, the Parties shall inform each other about any significant changes in such information.

## **Article 4.6. Recognition of Pest and Disease Area Status**

The Parties recognise the concepts of zoning, compartmentalisation and regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence. The Parties shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.

## **Article 4.7. Determination of Equivalence**

1. Equivalence may be determined for an individual measure, groups of measures, or systems related to a certain commodity or categories of commodities.

2. The consideration of equivalence by the importing Party upon request of the exporting Party for recognition of its measures shall not be a reason to disrupt trade or suspend ongoing imports from the exporting Party.

3. Within a reasonable period of time after conclusion of its assessment, the importing Party shall notify the exporting Party in writing about the equivalence determination. The importing Party shall implement the measure within a reasonable period of time. If an equivalence determination does not result in recognition by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.

4. The decision of recognition, non-recognition, withdrawal or suspension of equivalence rests solely with the importing Party acting in accordance with its administrative and legislative framework taking into account the guidelines, standards, and recommendations of the WOH, IPPC and the Codex Alimentarius.

5. If the importing Party formally recognises equivalence, it shall promptly adopt measures to give effect to the equivalence and enable trade between the Parties.

## **Article 4.8. Verifications**

1. In order to obtain or maintain confidence in the effective implementation of this Chapter, each Party, within the scope of this Chapter, shall have the right to carry out audits and verifications of the competent authorities' control programs or procedures of any other Party.

2. The process shall be carried out in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, WOH and IPPC. In particular, verification activities shall concentrate primarily on evaluating the effectiveness of the official inspection and certification systems rather than on specific commodities or establishments in order to determine the ability of the exporting Party's competent authority to control and deliver the required assurances to the importing Party.

3. The frequency of verifications shall depend on the results of previous verifications.

4. If the importing Party decides to carry out a verification visit in the exporting Party, the importing Party shall notify the exporting Party of the verification visit at least two months prior to such visit, except in emergency cases or if the Parties agree otherwise. Any modification concerning the verification visit shall be agreed by the Parties concerned.

## **Article 4.9. Import Checks and Certification Procedures**

1. Each Party shall ensure that its control, inspection and approval procedures, including, inter alia, procedures for sampling, testing and certification are in accordance with Annex C of the WTO SPS Agreement and this Article.

2. Each Party shall ensure that animals and animal products, plants and plant products, or other related goods - exported to another Party comply with the SPS requirements set out in the certificates of the importing Party.

3. The importing Party shall ensure that its import conditions for products imported from another Party are applied in a non-discriminatory manner and proportional to the risk associated with such products.

4. Import checks applied to imported products shall be carried out without undue delay and in the least trade-restrictive manner.

5. Information about the frequencies of import checks on such importations shall be made available upon request.
6. If goods are rejected at a port of entry due to a verified sanitary or phytosanitary issue, the importing Party shall inform the exporting Party's competent authority as soon as possible.
7. If the importing Party finds that certain goods are not in compliance with its requirements, it may put such goods under official detention and, in consultation with the exporter or its representative, decide to subject such goods to appropriate measures as defined in its domestic law. In taking these decisions, the importing Party shall take into account any information available to it or information submitted to it in a timely manner depending upon the risk, including submissions from the exporter or its representative. The persons responsible for the consignment shall be liable for the costs incurred by the importing Party for these activities.
8. Each Party shall ensure that the exporter or its representative shall have the right of appeal against decisions, and that he or she is provided with information about his or her rights of appeal, the applicable procedure and time limits.
9. This Article shall be without prejudice to the right of the competent authorities to promptly take an appropriate decision concerning emergency measures for the protection of human, animal or plant life or health taken to address serious risks for human, animal or plant life or health. The circumstances leading to the decision shall be explained to the exporter or its representative.
10. Inspection fees shall be equitable in relation to fees charged for the inspection of like domestic products.
11. Without prejudice to each Party's right to import controls, the importing Party shall accept certificates issued by the relevant competent authority in the exporting Party in compliance with the regulatory requirements of the importing Party.

#### **Article 4.10. Risk Assessment**

1. The Parties shall strengthen cooperation on risk assessment in accordance with the WTO SPS Agreement while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.
2. When conducting a risk assessment, the importing Party shall ensure that the risk assessment is documented and that it provides the concerned exporting Party or Parties with an opportunity to comment, in a manner to be determined by the importing Party.
3. Upon request by the exporting Party, the importing Party shall inform the exporting Party about the progress of the specific risk assessment request and any delay that may occur during the process.
4. Without prejudice to emergency measures, no Party shall stop the importation of a good of another Party solely for the reason that the importing Party is undertaking a review of an existing SPS measure.

#### **Article 4.11. Emergency Measures**

1. If a Party adopts an emergency measure which is necessary for the protection of human, animal, plant life or health and that may have an effect on trade, it shall immediately notify the exporting Parties concerned in writing through the contact points established under Article 4.16 or already established communication channels of the Parties.
2. The exporting Parties concerned may request discussions with the Party adopting an emergency measure according to paragraph 1. Such discussions shall be held as soon as practicable. Each Party shall endeavour, as part of these discussions, to provide relevant information. Each Party involved in the discussions shall take due account of any information provided through the discussions.
3. If a Party adopts an emergency measure, it shall review that measure within a reasonable period of time or upon request of the exporting Party. The importing Party may, if necessary, request relevant information and the exporting Party shall endeavour to provide the relevant information to assist the importing Party in the review of the adopted emergency measure. The importing Party shall provide the result of the review to the exporting Party upon request. If the emergency measure is maintained after the review, the importing Party shall review the measure periodically based on the most recent available information and, upon request of the exporting Party, shall explain the reason for the continuation of the emergency measure.

#### **Article 4.12. Transparency**

1. The Parties recognise the importance of transparency as set out in Annex B of the WTO SPS Agreement.

2. The Parties recognise the importance of exchanging information on the development, adoption and application of SPS measures that may have significant effects on trade between or among the Parties.
3. In implementing this Article, each Party shall take into account relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.
4. Each Party shall notify proposed measures or changes to existing SPS measures that may have a significant effect on its trade with the other Parties through the WTO SPS online submission system or contact points established under Article 4.16, or through already established communication channels of the Parties.
5. Unless urgent problems of health arise or threaten to arise, or the measure is of a trade facilitating nature, a Party shall normally allow a period of at least 60 days for other Parties to provide written comments after it makes a notification pursuant to paragraph 4. A Party shall consider reasonable requests from another Party to extend the comment period.
6. Upon reasonable request from another Party, a Party shall provide relevant information and clarification regarding any SPS measure to the requesting Party, within a reasonable period of time, including:
  - (a) the SPS requirements that apply for the import of specific products;
  - (b) the status of the Party's application; and
  - (c) procedures for authorising the import of specific products.
7. An importing Party shall provide timely and appropriate information to Parties concerned through contact points established under Article 4.16, or through already established communication channels of the Parties, where there is:
  - (a) significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments identified by the importing Party;
  - (b) a sanitary or phytosanitary measure adopted provisionally against or affecting the export of another Party considered necessary to protect human, animal or plant life or health within the importing Party.

### **Article 4.13. Information Exchange**

1. The Parties shall exchange information which is relevant for the implementation of this Chapter systematically, with a view to provide assurance, to strengthen mutual confidence and to demonstrate the efficacy of the programmes controlled. Where appropriate, this exchange of information may include exchange visits of officials. Upon request, notifications not covered by the WTO SPS Agreement shall be made to the contact points established under Article 4.16 in English. However, in case a Party wishes to notify in any other WTO language, an English translation shall be made available to the Parties.
2. Without prejudice to the WTO SPS Agreement, as regards notification of measures, the Parties may also exchange information on other relevant topics, including:
  - (a) any serious or significant human, animal or plant life or health risk, including any food emergencies; and
  - (b) sanitary and phytosanitary import requirements and their amendments, including the models for the official certificates or attestations, as prescribed by the importing Party.
3. An information exchange shall be considered to have taken place, in accordance with this Article if the information referred to in this Article has been made available:
  - (a) by a notification to the WTO in accordance with its relevant rules; or
  - (b) on the Parties' official and publicly accessible websites free of charge.

### **Article 4.14. Review Clause**

Upon request of a Party, the Parties shall without undue delay negotiate an arrangement extending to each other equivalent treatment related to SPS measures which all Parties have agreed with a non-Party.

### **Article 4.15. Sub-Committee on Sanitary and Phytosanitary Measures**

1. A Sub-Committee on sanitary and phytosanitary measures (hereinafter referred to as the "Sub-Committee on SPS") is hereby established under the Joint Committee, consisting of government representatives of the Parties.

2. The Sub-Committee on SPS shall consider any matter arising under this Chapter, including:

(a) monitoring and reviewing the implementation of this Chapter;

(b) encouraging discussions, cooperation and the exchange of information between the competent authorities on matters related to this Chapter;

(c) the preparation of recommendations and reports to the Joint Committee as necessary; and

(d) any other matter as referred to it by the Joint Committee.

3. The Sub-Committee on SPS shall act by consensus.

4. The Sub-Committee on SPS shall normally meet every two years unless otherwise agreed by the Parties. Such meetings may be conducted in any agreed manner on a case-by-case basis. The meetings of the Sub-Committee on SPS shall be chaired jointly by an EFTA State and India.

## **Article 4.16. Contact Points**

1. Each Party shall designate a contact point responsible for coordinating the implementation of this Chapter

2. Each Party shall provide the other Parties with the contact details of its contact point and shall promptly notify the other Parties of any change in contact point.

## **Article 4.17. Consultations**

If a Party has taken a measure which is likely to create, or has created an obstacle to trade between the Parties, another Party may request consultations. Such consultations shall be initiated as early as possible and conducted by the competent authorities of the Parties concerned in a mutually agreed manner. The outcome of the consultations shall be reported to the Sub-Committee on SPS.

## **Article 4.18. Cooperation**

1. The Parties shall strengthen their cooperation with a view to facilitate the implementation of this Chapter. In their cooperation, the Parties shall work to identify, develop and promote trade facilitating measures which may include:

(a) training and exchange of experience programmes for government officials and technical staff in relation to inspection, certification, testing procedures, verifications, meeting regulatory and market requirements;

(b) development and improvement of risk assessment procedure;

(c) forums such as seminars and workshops for the exchange of views and best practices on "the Parties" SPS regimes; and

(d) international standardisation activities and activities of the relevant international organisations.

2. The Parties may cooperate on any matter of mutual interest under this Chapter, including sector-specific proposals.

# **Chapter 5. TECHNICAL BARRIERS TO TRADE**

## **Article 5.1. Objectives**

The objective of this Chapter is to facilitate and increase trade in goods and obtain effective access to each Party's market. For this purpose, the Parties shall take steps to:

(a) improve the implementation of the Agreement on Technical Barriers to Trade, as set out in Annex 1A to the WTO Agreement (hereinafter referred to as the "WTO TBT Agreement");

(b) ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade;

(c) enhance cooperation between them in areas relevant to the application of this Chapter;

(d) increase their capacity to ensure, whenever appropriate, compliance with international standards and with their technical regulations, conformity assessment procedures and standards;

(e) promote convergence and alignment of technical regulations and standards towards relevant international technical regulations and standards, whenever applicable; and

(f) promote recognition of equivalence of technical regulations and facilitate acceptance of conformity assessment procedures.

## **Article 5.2. Affirmation of the WTO TBT Agreement**

1. The Parties affirm their rights and obligations with respect to each other under the WTO TBT Agreement which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. No Party shall have recourse to dispute settlement under Chapter 12 (Dispute Settlement) for a matter that exclusively alleges a violation of the provisions of the WTO TBT Agreement.

## **Article 5.3. Scope**

1. This Chapter shall apply to the preparation, adoption and application of all technical regulations, standards and conformity assessment procedures of central level of government bodies which may affect trade in goods between the Parties.

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance with this Chapter by regional level government bodies on the level directly below that of the central level of government within its territory, which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures.

3. Notwithstanding paragraph 1, this Chapter shall not apply to:

(a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; and

(b) sanitary and phytosanitary measures as defined in Annex 1A of the Agreement on the Application of Sanitary and Phytosanitary Measures, as set out in Annex 1A to the WTO Agreement (hereinafter referred to as the "WTO SPS Agreement").

## **Article 5.4. Cooperation**

1. The Parties shall strengthen their cooperation with a view to increase the mutual understanding of their respective systems and facilitate access to their respective markets. To this end, they may establish regulatory dialogues at both the horizontal and sectoral levels.

2. In their cooperation, the Parties shall work to identify, develop and promote trade facilitating measures which may include:

(a) reinforcing regulatory cooperation through, for example, training, exchange of information, experience and data whenever available, and scientific and technical cooperation with a view to create technical regulations that are not more trade restrictive than necessary and make efficient use of regulatory resources;

(b) where appropriate, considering the simplification of technical regulations, standards and conformity assessment procedures;

(c) working towards the possibility of converging or aligning technical regulations, standards and conformity assessment procedures, in particular where no international standards exist;

(d) promoting and encouraging cooperation between their respective organisations, public or private, responsible for technical regulations, standardisation, conformity assessment procedures and metrology, both bilaterally and in international fora;

(e) programmes to increase the capacity of enterprises, in particular micro, small and medium-sized enterprises, to meet regulatory and market requirements;

(f) cooperating on good regulatory practices;

(g) promoting and encouraging participation in international standard setting bodies, such as the International Organization

for Standardization, the International Electrotechnical Commission and the International Telecommunication Union, and promoting the use of international standards as a basis for technical regulations;

(h) exchanging views, in the context of international fora, such as the WTO Committee on Technical Barriers to Trade, in particular on the use of international standards in support of regulation; and

(i) promoting the development of the necessary technical infrastructure in the field of standardisation, conformity assessment and metrology.

## **Article 5.5. Technical Regulations**

1. The Parties recognise the importance of the use of international standards and agree:

(a) to use relevant international standards or relevant parts of them as a basis for technical regulations, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued in accordance with Article 2.4 of the WTO TBT Agreement;

(b) where international standards have not been used as a basis for technical regulations, upon request of a Party, to explain to that Party in writing the reasons why such standards have been judged inappropriate or ineffective for the aim pursued and, whenever possible, to identify the parts which in substance deviate from relevant international standards;

(c) to each publish, free of charge, technical regulations on an official website;

(d) to ensure that interested persons of another Party are allowed to participate in any consultation open to the general public concerning the preparation of technical regulations;

(e) when making notifications in accordance with Article 2.9 of the WTO TBT Agreement, to allow for the Party receiving the notification, normally 60 days from the notification, to provide comments in writing on the proposal unless in exceptional cases where urgent problems explicitly stated, of safety, health, environmental protection or national security arise or threaten to arise; and where practicable to give appropriate consideration to reasonable requests for extending the comment period;

(f) except in urgent circumstances referred to in Article 2.10 of the WTO TBT Agreement, to allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for the economic operators of the exporting Party to adapt their products or methods of production to the requirements of the importing Party; and

(g) to consider the possibility of recognising the equivalence of technical regulations of another Party. For that purpose, a Party which has prepared a technical regulation that it considers to be equivalent to a technical regulation of another Party, having essentially the same objective, scope and level of protection to be achieved may request in writing that another Party recognises it as equivalent. Such written request shall set out the reasons why the technical regulations are considered to be equivalent.

2. To facilitate an appropriate explanation under subparagraph 1 (a), the requesting Party shall ensure that its request for an explanation:

(a) identifies the relevant international standard, guide or recommendation that the requested Party has not used as the basis for its technical regulation; and

(b) describes how the technical regulation which is not based on the international standard, guide or recommendation is a restriction, or has the potential to restrict trade between the Parties.

3. The Parties shall ensure that products lawfully put on the market can move freely within their respective territories provided that they comply with the relevant requirements on technical barriers to trade of the market at the point of entry.

## **Article 5.6. Standards**

The Parties shall, upon request, exchange information on:

(a) their use of standards related to technical regulations;

(b) their standardisation processes and the use of international standards as a basis for their national standards; and

(c) cooperation agreements or arrangements on standardisation with third parties or international organisations, subject to the confidentiality obligations of those agreements or arrangements.

2. Where standards are made mandatory in a technical regulation, the transparency obligations set out in Article 5.12 shall be fulfilled.

3. Each Party shall encourage its recognised standardisation bodies to cooperate with the relevant recognised standardisation bodies of the other Parties in international standardisation activities. Such cooperation may take place through the Parties' activities in regional and international standardisation bodies of which the recognised standardisation bodies of all the Parties are members.

## **Article 5.7. Conformity Assessment**

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures conducted in another Party, which may contribute to increased efficiency, avoidance of duplication and cost effectiveness. These mechanisms include:

- (a) the importing Party's acceptance of a supplier's declaration of conformity;
- (b) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in another Party;
- (c) use of accreditation procedures for qualifying conformity assessment bodies located in the territory of another Party;
- (d) governmental designation of conformity assessment bodies located in another Party;
- (e) recognition by a Party of the results of conformity assessment procedures conducted in another Party;
- (f) voluntary arrangements between conformity assessment bodies in each Party; and
- (g) utilising existing regional and international mutual recognition agreements of which both Parties are parties.

2. Having regard to these considerations, the Parties agree to:

- (a) intensify their exchange of information on these and similar mechanisms with a view to facilitating the acceptance of conformity assessment results;
- (b) exchange information on conformity assessment procedures, including on the selection of appropriate conformity assessment procedures;
- (c) exchange information on accreditation policy and promote the use of accreditation to facilitate acceptance of conformity assessment results and consider how to make best use of international standards for accreditation and international agreements involving the Parties' accreditation bodies, for example, through the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), or the International Accreditation Forum's (IAF) Multilateral Arrangement (MLA);
- (d) if the Parties accept results of conformity assessment procedures conducted in another Party's territory, it shall be on terms no less favourable than conformity assessment procedures conducted in its own territory; and
- (e) encourage accreditation bodies and conformity assessment bodies, to participate in cooperative voluntary arrangements, as a basis for acceptance of conformity assessment results.

## **Article 5.8. Joint Cooperation on Technical Regulations, Standards and Conformity Assessment Procedures**

1. For the purpose of applying Article 5.1.2 of the WTO TBT Agreement, where a Party requires positive assurance of conformity with its applicable technical regulations for accepting a product on its market, the Party shall ensure that the required level of assurance of conformity takes into account the risk that non-compliance would entail with regard to the legitimate objective pursued.

2. A Party may, in order to fulfil a legitimate objective, decide to introduce pre-registration, registration, authorisation or mandatory third-party conformity assessment to allow access of a product to its market. Before introducing such measures, it shall notify such draft measure in accordance with Article 2.9.2 of the WTO TBT Agreement. Upon request of another Party, it shall provide the reasons with explanation for such proposed change.

3. For sectors where mandatory third-party assurance of conformity or pre-registration, registration or authorisation is required, the Parties agree to encourage their conformity assessment bodies to join any existing arrangements for

international harmonisation of technical regulations and mutual recognition of conformity assessment results at multilateral level, or to cooperate towards the creation of new ones as appropriate.

## **Article 5.9. Market Surveillance**

The Parties undertake, inter alia, to:

- (a) exchange views on market surveillance and enforcement mechanisms and related activities; and
- (b) ensure that there are no conflicts of interest between the market surveillance bodies and the manufacturers or producers subject to control or supervision.

## **Article 5.10. Conformity Assessment Fees and Processing Periods**

With regard to the processing times and fees charged for assessing the conformity of products, the Parties reaffirm their obligations under Article 5.2 of the WTO TBT Agreement.

## **Article 5.11. Marking and Labelling**

The Parties agree that where their technical regulations contain mandatory marking or labelling requirements, each Party will observe the principles of Article 2.2 of the WTO TBT Agreement and:

- (a) each Party shall endeavour to minimise labelling and marking requirements to those which are relevant to consumers or users of the products or to indicate the products conformity with mandatory technical requirements;
- (b) each Party may specify the content of labels and markings, but shall not require prior approval, registration, or certification of the labels or markings of products as a precondition for placing on their respective markets, for sale or free of charge, products that otherwise comply with its mandatory technical requirements, unless it is not more trade restrictive than necessary to fulfil legitimate objectives;
- (c) if that Party mandates the use of a unique identification number by economic operators, it shall issue such a number to the other Parties' economic operators without undue delay;
- (d) if that Party requires the information on the labels to be in a specified language, it shall also accept other languages in addition to the mandatory language, unless the information would be misleading, contradictory or confusing in relation to the information that the importing Party requires with respect to the goods; and
- (e) each Party shall, except in cases where they consider that legitimate objectives under the WTO TBT Agreement would be compromised thereby, endeavour to accept non-permanent or detachable labels or labelling in the accompanying documentation rather than physically attached to the product.

## **Article 5.12. Transparency**

1. The Parties recognise the importance of the provisions relating to transparency in the WTO TBT Agreement. To this end, the Parties shall take into account relevant Decisions and Recommendations adopted by WTO Committee on Technical Barriers to Trade since 01 January 1995 (G/TBT/1/Rev.15) as may be revised.
2. Upon written request of a Party, the requested Party shall provide the full text or summary of its notified technical regulations and conformity assessment procedures in English within 30 days from receipt of the request. The content of the summary shall be determined by the responding Party.
3. Each Party shall, upon written request of another Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure that Party has adopted or is proposing to adopt.
4. Each Party shall take the comments of another Party into account and shall, upon request of that other Party, endeavour to provide responses to these comments.
5. If a Party detains at the point of entry an imported consignment, due to non-compliance with a technical regulation or a conformity assessment procedure, it shall notify the importer or its representative, as soon as possible, the reasons for the detention.
6. Unless otherwise provided for in this Chapter, any information or explanation requested by a Party pursuant to this



Chapter shall be provided by the requested Party, in print or electronically, within a reasonable period of time agreed between the requesting and requested Parties and, if possible, within 60 days. Upon request of the requesting Party, the requested Party shall provide such information in English.

### **Article 5.13. Contact Points**

1. Each Party shall designate a contact point responsible for coordinating the implementation of this Chapter.
2. Each Party shall provide the other Parties with the contact details of its contact point and shall promptly notify the other Parties of any change in those.

### **Article 5.14. Sub-Committee on Technical Barriers to Trade**

1. A Sub-Committee on Technical Barriers to Trade (hereinafter referred to as the "Sub-Committee on TBT") is hereby established under the Joint Committee, consisting of representatives of the Parties.
2. The Sub-Committee on TBT shall consider any matter arising under this Chapter, including:
  - (a) monitoring, reviewing and enhancing the implementation of this Chapter, including its annexes, if any;
  - (b) encouraging discussions, cooperation and exchange of information between competent authorities on matters related to this Chapter;
  - (c) discussing means of improving access to the Parties's respective markets;
  - (d) considering additions and amendments to the list of sectors or product areas under annexes to this Chapter, if any;
  - (e) facilitating sectoral cooperation among governmental and non- governmental conformity assessment bodies and laboratories in the Parties's territories;
  - (f) the preparation of recommendations and report to the Joint Committee as necessary; and
  - (g) any other matter referred to it by the Joint Committee.
3. The Sub-Committee on TBT shall act by consensus.
4. Unless otherwise agreed by the Parties, the Sub-Committee on TBT shall normally meet every two years. Such meetings may be conducted in any agreed manner on a case-by-case basis. The meetings of the Sub-Committee on TBT shall be chaired jointly by an EFTA State and India.

### **Article 5.15. Exchange of Information and Consultations**

1. A Party shall give prompt and positive consideration to any request from another Party for information, clarification and consultations on issues relating to the implementation of this Chapter. The Sub-Committee on TBT may discuss and decide on timeframes and other modalities on information, clarification and consultations.
2. A Party may request consultations with another Party if that other Party has taken a measure which is likely to create or has created an obstacle to trade between the Parties. Such consultations shall be initiated as soon as possible and may be conducted by the competent authorities of the Parties concerned in a mutually agreed manner. The outcome of the consultations shall be reported to the Sub-Committee on TBT.
3. The Parties agree to enhance their communication and exchange of information on issues within the scope of this Chapter, in particular on ways to facilitate compliance with their technical regulations, standards and conformity assessment procedures and to eliminate unnecessary obstacles to trade in goods between them.

### **Article 5.16. Review Clause**

Upon request of a Party, the Parties shall without undue delay negotiate an arrangement extending to each other equivalent treatment related to technical regulations, standards and conformity assessment procedures which all Parties have agreed with a non-Party.

## **Chapter 6. TRADE IN SERVICES**

## **Article 6.1. Scope and Coverage**

This Chapter shall apply to measures by the Parties affecting trade in services.

## **Article 6.2. Incorporation of Provisions from the GATS**

1. With regard to the rights and obligations of the Parties under this Chapter, the provisions of the GATS and its annexes, including the definitions set out therein, are hereby incorporated into and made part of this Chapter, mutatis mutandis, except as provided under this Chapter. (3)
2. Chapter 13 shall substitute Part V of the GATS. Article 6.3 shall apply with regard to the Parties' most-favoured nation obligations under this Chapter. (4) Article 6.5 shall substitute paragraph (m) of Article XXVIII of the GATS.
3. Schedules of specific commitments and lists of most-favoured-nation exemptions under the GATS are substituted by the Parties' Schedules of Specific Commitments and Lists of MFN Exemptions which are set out respectively in Annexes 6.F and 6.G, and form an integral part of this Chapter. The terms "schedule" and "specific commitments" contained in GATS provisions shall be understood as referring to the Schedules of Specific Commitments annexed to this Chapter and to the specific commitments inscribed therein, respectively.
4. For the purposes of this Chapter "Member" contained in provisions of the GATS that are incorporated into and made part of this Chapter means "Party". However, under Article XII:2(a) of the GATS "Members" means "Members of the WTO".
5. The provisions incorporated from the GATS and its annexes are complemented by the provisions of the following Annexes, which form an integral part of this Chapter:
  - (a) Annex 6.A (Financial Services);
  - (b) Annex 6.B (Telecommunications Services);
  - (c) Annex 6.C (Movement of Natural Persons Supplying Services);
  - (d) Annex 6.D (Recognition of Qualifications of Service Suppliers); and
  - (e) Annex 6.E (Maritime Personnel).

(3) The Parties understand that they are not required to negotiate bilaterally the specific provisions for which multilateral negotiations have been mandated under the GATS in relation to emergency safeguard measures, government procurement and subsidies or hold consultations as provided in respect of balance of payments. The Parties also understand that provisions of the GATS requiring notification or any other communication to the Council for Trade in Services shall not apply bilaterally. The Parties are not required to bilaterally implement similar provisions contained in Annexes to the GATS, such as Air Transport review, most-favoured-nation review or Maritime Transport.

(4) The Parties understand that with respect to provisions of the GATS that are incorporated into and made part of this Chapter mutatis mutandis, reference to Article II of the GATS shall be understood as referring to Article 6.3 of this Chapter.

## **Article 6.3. Most-Favoured Nation Treatment (5)**

1. Without prejudice to measures taken in accordance with Article VII and Article IL.3 of the GATS, and except as provided for in its list of most-favoured- nation exemptions contained in Annex 6.G, each Party shall accord immediately and unconditionally in respect of all measures affecting the supply of services, to services and service suppliers of another Party, treatment no less favourable than the treatment it accords to like services and services suppliers of any non- Party.
2. Treatment granted under other existing or future agreements concluded by a Party and notified under Article V or Article Vbis of the GATS shall not be subject to paragraph 1.
3. If a Party concludes or amends an agreement of the type referred to in paragraph 2, it shall, upon request of another Party give consideration for negotiating the incorporation into this Agreement of a treatment no less favourable than that provided under the former agreement. Such incorporation, if agreed, should maintain the mutual balance of commitments undertaken by each Party under this Agreement.

## **Article 6.4. Schedules of Specific Commitments**

1. The specific commitments each Party undertakes in line with Part III of the GATS are set out in Annex 6.F.
2. With respect to sectors where such commitments are undertaken, each schedule shall specify:
  - (a) terms, limitations, and conditions on market access;
  - (b) conditions and qualifications on national treatment;
  - (c) undertakings relating to additional commitments referred to in Article XVIII of the GATS;
  - (d) where appropriate, the time-frame for implementation of such commitments; and
  - (e) the date of entry into force of such commitments.
3. Article XX:2 of the GATS shall apply to measures inconsistent with both Articles XVI and XVII of the GATS.

(5) This Article shall not apply to Financial Services.

## **Article 6.5. Natural Persons of a Party**

For the purposes of this Chapter, "natural person of another Party" means a natural person who resides in the territory of that other Party or any other Party and who, under the domestic law of that other Party, is:

- (a) a national or citizen of that other Party; or
- (b) a permanent resident of that other Party provided that the Party accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided further that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents.

## **Article 6.6. Payments and Transfers**

1. Except under the circumstances envisaged in Article XII of the GATS, no Party shall apply restrictions on international transfers and payments for current transactions relating to its specific commitments.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of Agreement of the International Monetary Fund adopted at Bretton Woods on 22 July 1944 (hereinafter referred to as "IMF Articles of Agreement"), including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that no Party shall impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII of the GATS or at the request of the International Monetary Fund.

## **Article 6.7. Denial of Benefits**

In addition to Article XXVII of the GATS, a Party may, subject to prior notification and consultation, deny the benefits of this Chapter to the supply of a service from or in the territory of another Party, if the Party establishes that the service is supplied by a service supplier that is owned or controlled by a person of a non-Party and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the service supplier or that would be violated or circumvented, if the benefits of this Chapter were accorded to the service supplier.

# **Chapter 7. INVESTMENT PROMOTION AND COOPERATION**

## **Article 7.1. Objectives**

1. The Parties recognise the importance of promoting and facilitating foreign direct investment as a means for fostering economic growth, innovation and green transition.
2. The Parties acknowledge the role of skilled workforce development to advance job opportunities, including through cooperation in basic, higher and technical-vocational education and skill training, capacity building and exchange programs.
3. The Parties share the objectives that:

(a) the EFTA States shall aim to increase foreign direct investment from investors of the EFTA States into India by 50 billion (US dollars) within 10 years from the entry into force of this Agreement and an additional 50 billion (US dollars) in the succeeding 5 years (6) (7); and

(b) the EFTA States shall aim to facilitate the generation of 1 million jobs (8) within 15 years in India from the entry into force of this Agreement, resulting from inflows of foreign direct investment from investors of the EFTA States into India.

(6) Investments routed from outside EFTA States shall be taken into account if shown that the investments are made by investors of an EFTA State. Investments routed through EFTA States by investors of non-Parties either not established in an EFTA State, or established in an EFTA State but without substantial business activities in an EFTA State, shall not be considered as EFTA investments.

(7) The Parties recognise that India's rapid economic development over the last two decades, a time period during which the country's annual nominal GDP growth rate of around 9.5% in US dollars terms, was accompanied by a sustained increase of nominal foreign direct investment stocks from the EFTA States into India (around 13% annual increase over the same time period), resulting in an foreign direct investment stock of the EFTA States in India of 10.7 billion US dollars in 2022. Based on these observations and on future economic growth foreseen by India, the EFTA States aim to contribute to sustaining, and strengthening their, investment footprint in India. This shared objective is based on an estimated nominal GDP growth rate of India in US dollars terms over the next 15 years in line with past growth rates as referred to above, and the anticipated benefits of a full implementation of this Agreement by the Parties, from which the Parties anticipate an outperformance margin on investment of 3 percentage points per year, in addition to estimated annual foreign direct investment increases from the EFTA States based on past growth rates as referred to above.

(8) For greater certainty, "jobs" shall mean direct employment in India which are clearly attributable to the foreign direct investment.

## **Article 7.2. Investment Promotion**

1. To achieve the shared objectives in paragraph 3 of Article 7.1, the EFTA States shall promote foreign direct investments (9) from investors of the EFTA States into India and generation of jobs in India as a result of such investments.

2. In view of promotion activities for investments into India, India shall endeavour to ensure a favourable climate for foreign direct investment, while taking into account the need to identify, assess and mitigate potential risks for security or public order.

(9) For greater certainty, Parties recognise that sovereign wealth funds are excluded from the promotion obligations undertaken by the EFTA States.

## **Article 7.3. Cooperation Activities**

1. The Parties shall cooperate in areas of mutual interest with a view to benefitting from the complementarities of their economies and the opportunities created under this Agreement in terms of the envisaged job creation in accordance with Article 7.1.

2. Areas of cooperation may include:

(a) appropriate means of identifying investment opportunities and information channels on investment regulations, with the aim of facilitating foreign direct investment;

(b) elaboration of strategies and programs to identify key obstacles to and opportunities for investment in the Parties, with a focus on high value- added sectors with linkages to regional and global value chains and potential measures to remove obstacles;

(c) furthering of an environment conducive to increased investment flows; and technology collaboration (10),

(d) development of mechanisms for joint investments and ventures between enterprises including micro, small and medium sized enterprises;

(e) development and execution of public-private strategies for the identification of investment opportunities in, and matchmaking of investors between, the Parties;

- (f) facilitation of continued skill development, vocational and professional education, and training;
- (g) encouragement of technical cooperation and facilitation of technological collaboration in sectors of mutual interest for the development and enhancement of infrastructure and industrial capabilities; and
- (h) facilitation of partnerships among centres of excellence, government agencies and expert institutes in fields of mutual interest. Such fields may include earth science, telemedicine, STEM, healthcare, biotechnology, digital technology, renewable energy, clean technology and sustainable metal making.

3. The Parties may cooperate pursuant to paragraph 2 through activities such as:

- (a) regular economic and scientific missions with high-ranking delegations;
- (b) annual high-level meetings between individual EFTA States and India with the participation of the private sector;
- (c) regular investment promotion events, such as, at the World Economic Forum with participation of the private sector;
- (d) sector-specific business roundtables;
- (e) roadshows in India and in the different EFTA States;
- (f) thematic expert exchanges;
- (g) support for Invest India in setting up representations in some EFTA States;
- (h) exchanges within the framework of existing town twinning programmes;
- (i) support for vocational education and training projects; and
- (j) other activities as mutually agreed by the Parties.

(10) For greater certainty, technology collaboration does not require technology transfer. Technology collaboration may include collaboration for facilitating and promoting cooperation between centres of excellence, dialogue and exchange of information between the Parties, sharing best practices on industrial competitiveness, innovation and technological enhancements, facilitation of MoUs among stakeholders in the respective fields, and discussions on reducing barriers to such effective collaboration.

## **Article 7.4. Sub-Committee on Investment Promotion and Cooperation**

1. The Parties hereby establish a Sub-Committee on Investment Promotion and Cooperation (hereinafter referred to as "Investment Sub-Committee"), consisting of government representatives of the Parties.

2. The mandate of the Investment Sub-Committee is set out in Annex 7.A (Mandate of the Sub-Committee on Investment Promotion and Cooperation).

## **Article 7.5. Contact Points**

1. Upon entry into force of this Agreement:

- (a) each Party shall designate a contact point responsible for facilitating communication between the Parties regarding the implementation of this Chapter; and
- (b) India shall establish a dedicated EFTA-Desk to assist investors from the EFTA States seeking to invest, investing or having invested, in particular with any problems that may arise.

2. Each Party shall provide the other Parties with the contact details of its contact point and shall promptly notify the other Parties of any change in contact point designated in paragraph 1.

## **Article 7.6. Dispute Settlement**

No Party shall have recourse to dispute settlement under Chapter 12 (Dispute Settlement) for any matter arising under this Chapter.

## **Article 7.7. Review, Reporting and Three-tier Government-to-Government**

## Consultations

1. The Parties agree to a three-tier Government-to-Government consultations procedure for resolution of differences raised in relation to the obligations in paragraph 1 of Article 7.2.
2. The Investment Sub-Committee shall review progress towards the achievement of the shared objectives under paragraph 3 of Article 7.1.
3. The first review by the Investment Sub-Committee shall be held no later than 5 years after entry into force of this Agreement. The second review by the Investment Sub-Committee shall be held no later than 10 years after entry into force of this Agreement. The final review by the Investment Sub-Committee shall take place 15 years after entry into force of this Agreement. The Parties may mutually agree on a different timeline or additional reviews.
4. The Investment Sub-Committee shall prepare a report for each of the reviews. If the Investment Sub-Committee finds that the progress towards achievement of the shared objectives in paragraph 3 of Article 7.1 has been insufficient, it shall record the occurrence of any unforeseen events and other factors which have had a material bearing on the progress.
5. In case of occurrence of any unforeseen circumstances like global pandemic, war, geopolitical disruptions, financial crisis or sustained economic underperformance, which have had a material bearing on the progress to achieve the shared objectives, the Parties shall adjust the shared objectives accordingly through an amendment of paragraph 3 of Article 7.1.
6. Should the shared objectives under paragraph 3 of Article 7.1 not be reached by the final review, and India considers that the EFTA States have not fulfilled the obligations to promote investments from investors of the EFTA States into India as set out in paragraph 1 of Article 7.2, India may request consultations. The Investment Sub-Committee shall be convened within 30 days of receipt of India's written request for such consultations.
7. The scope of the consultations shall be limited to determining whether the EFTA States have fulfilled their obligations under paragraph 1 of Article 7.2 related to the shared objectives under paragraph 3 of Article 7.1, and where applicable, to finding a mutually satisfactory solution between the Parties.
8. The Investment Sub-Committee shall endeavour to settle issues within 60 days from convening of the Investment Sub-Committee with due consideration to the final report. This period may be extended by no more than 1 year upon request of a Party.
9. If the Investment Sub-Committee determines that the obligations in paragraph 1 of Article 7.2 have not been fulfilled, the Investment Sub-Committee shall make recommendations to the Joint Committee.
10. If after the 1 year period from the request of consultations by India, the matter remains unresolved, then the Investment Sub-Committee shall refer the matter to the Joint Committee for consultation, with its recommendations.
11. The Joint Committee shall begin consultation upon the receipt of the referral from the Investment Sub-Committee under paragraph 10, with a view to reaching a mutually satisfactory solution. If the Joint Committee cannot resolve the matter within 6 months, the same shall be referred to the representatives of the EFTA States and India at the level of Ministers. Such representatives shall be identified in writing.
12. Such representatives of the EFTA States and India shall begin consultations no later than 30 days from the receipt of the referral from the Joint Committee. The representatives of the Parties shall take no more than 6 months from the receipt of the referral from the Joint Committee, to arrive at a mutually satisfactory solution to the matter raised by the requesting Party. If the matter is not resolved within 6 months, a grace period of an additional 3 years shall, upon request of a Party, be observed. The request shall state the grounds and may outline possible actions from the EFTA States towards the achievement of the shared objectives under paragraph 3 of Article 7.1.
13. Nothing in this Chapter shall require the Parties to disclose any information that they consider confidential. The Parties shall treat as confidential any information designated as such by the Party providing the information.

## Article 7.8. Remedial Measures

1. If no mutually satisfactory solution subsequent to consultations under paragraphs 6 to 12 of Article 7.7 has been found and the grace period has elapsed without having achieved the shared objectives under paragraph 3 of Article 7.1, India may, notwithstanding any other provision under this Agreement, within 1 year, undertake temporary and proportionate remedial measures to rebalance the concessions given to the EFTA States in the Schedule of Commitments under the Chapter on Trade in Goods.

2. India shall notify the EFTA States of the remedial measures it intends to take, the grounds for such remedial measures and when they will commence, no later than 30 days before the date on which the remedial measures are due to take effect.

3. Remedial measures shall be temporary and shall be:

(a) terminated once the shared objectives set out in paragraph 3 of Article 7.1 have been achieved; or

(b) modified or terminated pursuant to: (i) a mutually agreed solution between the Parties to such effect; or (ii) a decision to such effect pursuant to paragraph 4.

4. If remedial measures continue beyond 3 years, a Party may request the Joint Committee to examine whether the remedial measures should be modified or terminated. Such request shall include the requesting Party's grounds for modification or termination of remedial measures. The Joint Committee shall begin consultations on such a request no later than 30 days from the receipt of such a request. The Joint Committee shall aim to find a mutually agreed solution within 6 months from the request by the Party. If the Joint Committee cannot resolve the matter within 6 months, the same shall be referred to the representatives of the EFTA States and India at the level of Ministers. If the Joint Committee or the representatives at the level of Ministers recommend modification or termination of the remedial measures, the measures necessary to modify or terminate shall be taken within the agreed time period in accordance with the recommendation. Unless the remedial measures are terminated, the Joint Committee shall thereafter examine the continuation or modification of the remedial measures at a 2-year interval, following the same procedure, until the remedial measures have ceased to apply.

## **Chapter 8. PROTECTION OF INTELLECTUAL PROPERTY**

### **Article 8.1. Protection of Intellectual Property**

1. The Parties shall provide for adequate, effective and non-discriminatory protection of intellectual property rights, and enforcement of such rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Article, and Annex 8.A (Protection of Intellectual Property) to this Agreement, including the objectives specified under Article 7 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex IC to the WTO Agreement (hereinafter referred to as the "TRIPS Agreement").

2. The Parties shall accord to each other's nationals, treatment no less favourable than that they accord to their own nationals. Exemptions from this obligation must be in accordance with the substantive provisions of Articles 3 and 5 of the TRIPS Agreement.

3. The Parties shall grant to each other's nationals, treatment no less favourable than that accorded to nationals of any other State. Exemptions from this obligation must be in accordance with the substantive provisions of the TRIPS Agreement, in particular Articles 4 and 5 thereof.

4. The Parties agree to discuss and aim to resolve, within the mandate of the Joint Committee set out in Article 13.1, issues relating to the implementation or application of this Chapter and Annex 8.A, with a view to avoiding or remedying trade distortions.

## **Chapter 9. GOVERNMENT PROCUREMENT**

### **Article 9.1. Government Procurement**

1. Recognising the importance of government procurement in furthering the expansion of production and trade so as to promote growth and employment, the Parties shall enhance mutual understanding of their government procurement laws, regulations, and agreements.

2. The following contact point shall serve to facilitate communication between the Parties on any matter regarding government procurement:

(a) for India: FT (Europe) Division, Department of Commerce, Ministry of Commerce and Industry; and

(b) for the EFTA States: the EFTA Secretariat.

3. The Parties shall review this Article in the Joint Committee within 3 years from the entry into force of this Agreement, and examine the possibility of developing and deepening their cooperation under this Agreement.

## **Chapter 10. COMPETITION**

### **Article 10.1. Anticompetitive Behaviour Affecting Trade**

1. The following practices of enterprises are incompatible with the proper functioning of this Agreement in so far as they may adversely affect trade between an EFTA State and India:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or effect the prevention, restriction or distortion of competition; and

(b) abuse by one or more enterprises of a dominant position in the territory of a Party.

2. The provisions of paragraph 1 shall also apply to the activities of public enterprises, and enterprises to which the Parties grant special or exclusive rights, in so far as the application of these provisions does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. The provisions of paragraphs 1 and 2 shall not be construed so as to create any direct obligations for enterprises.

### **Article 10.2. Cooperation**

1. The Parties involved may, through their competent authorities, cooperate in their dealings with anticompetitive practices as outlined in paragraph 1 of Article 10.1, with the aim of putting an end to such practices or their adverse effects on trade. Cooperation may include exchange of non-confidential information that is available to the Parties.

2. The Parties may engage in cooperation activities on general matters of competition law and policy. Upon request of a Party, the requested Party may make available to the requesting Party public information concerning its competition laws and related enforcement activities.

### **Article 10.3. Consultations**

1. Upon request of a Party, the Parties may enter into consultations regarding any matter arising under this Chapter, including the effects of the practices outlined in paragraph 1 of Article 10.1 on trade. In its request, the Party shall submit all relevant non-confidential information to discuss this matter, and if relevant, how such a practice affects trade between the Parties.

2. To facilitate discussion of the matter that is the subject of the consultations, each Party may provide relevant non-confidential information to the Joint Committee.

### **Article 10.4. Non-Application of Dispute Settlement**

No Party shall have recourse to Chapter 12 (Dispute Settlement) for any matter arising under this Chapter.

### **Article 10.5. Review**

The Parties may review the provisions of this Chapter 2 years from the entry into force of this Agreement.

## **Chapter 11. TRADE AND SUSTAINABLE DEVELOPMENT**

### **Article 11.1. Scope, Context and Objectives**

1. Recalling the Rio Declaration on Environment and Development and the Agenda 21 adopted by the United Nations Conference on Environment and Development in Rio de Janeiro on 14 June 1992, the Johannesburg Declaration on Sustainable Development and its Plan of Implementation adopted in Johannesburg on 4 September 2002, the International Labour Organization (hereinafter referred to as "ILO") Declaration on Fundamental Principles and Rights at Work (1998) adopted by the International Labour Conference at its 86th Session in Geneva on 18 June 1998, as amended in 2022 (hereinafter referred to as "ILO Declaration on Fundamental Principles and Rights at Work"), the Ministerial Declaration on Generating Full and Productive Employment and Decent work for all and its Impact on Sustainable Development adopted by the United Nations Economic and Social Council of 2006, in Geneva on 5 July 2006, the ILO Declaration on Social Justice for a Fair Globalization (2008) adopted by the International Labour Conference at its 97th Session in Geneva on 10 June 2008, as amended in 2022, the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future



We Want" endorsed by the UN General Assembly Resolution 66/288 adopted on 27 July 2012 (hereinafter referred to as the RIO+20 Outcome Document "The Future We Want"), the UN 2030 Agenda for Sustainable Development, adopted by the UN General Assembly Resolution 70/1 on 25 September 2015 and its Sustainable Development Goals and the multilateral environmental agreements to which the Parties are party, the Parties reaffirm their commitment to pursue the objective of sustainable development, whose pillars, economic development, social development and environmental protection are mutually supportive, interdependent and essential requirements of sustainable development.

2. The Parties agree to promote international trade in such a way as to contribute towards sustainable development for eradicating poverty and hunger, including towards broad-based, sustained and inclusive economic growth, social development and environmental protection, and to work to integrate and reflect this objective in their trade relationship.

3. Accordingly, the Parties emphasise that it is their aim to strengthen their trade relations and cooperation in ways that promote sustainable development, and it is not their intention in this Chapter to harmonise the labour or environment standards of the Parties.

4. For the purposes of this Chapter, for India, "laws and regulations" mean an Act of the Parliament of India or delegated legislation framed pursuant to an Act of the Parliament of India, which is enforceable by action of the Central or Union level of Government.

## **Article 11.2. Right to Regulate and Upholding-Levels of Protection**

1. Recognising the right of each Party, in a manner consistent with the provisions of this Chapter, to set its domestic sustainable development policies and priorities, to establish its own levels of labour and environmental protection, and to adopt or modify accordingly its relevant laws and policies, each Party shall seek to ensure that its laws, policies and practices provide for and encourage achieving sustainable development objectives.

2. The Parties are committed not to derogate from or, through a sustained or recurring course of action or inaction, fail to effectively enforce their respective environmental and labour laws in a manner affecting trade between the Parties.

3. The Parties stress that environmental and labour measures shall not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

4. The Parties recognise the value of international agreements on labour and the environment as means to address global and regional environmental and social challenges. In this context, the Parties stress that neither labour nor environmental issues shall be used for protectionist trade purposes. The Parties note that their comparative advantage should in no way be called into question.

## **Article 11.3. Promoting Environmentally Sustainable and Inclusive Growth**

1. The Parties recognise that trade should contribute towards broad-based, sustainable and inclusive growth, which is necessary to alleviate poverty, raise standards of living, ensure full employment and a large and steadily growing volume of real income and effective demand, and expand the production of and trade in goods and services.

2. The Parties acknowledge the importance of incorporating a gender perspective in the promotion of inclusive economic development and that gender-responsive policies are key elements to enhance the participation of all in the economy and international trade in order to achieve sustainable economic growth.

3. The Parties reaffirm their commitment to implement the international agreements pertaining to gender equality or non-discrimination to which they are a party.

4. The Parties further recognise that in accordance with the objective of sustainable development, they shall allow for the optimal use of the world's resources, seeking both to protect and preserve the environment, and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

5. In this regard, the Parties recall that the Rio+20 Outcome Document "The Future We Want" provides sufficient flexibility and policy space for the Parties to make their own choices out of a broad menu of options and define their paths towards sustainable development based on each Party's stage of development, national circumstances and priorities.

6. Recognising the importance of cooperation and supportive measures, the Parties reaffirm their commitment to implement their respective commitments regarding cooperation and supportive measures, such as financial, technological, technical or capacity building support, as relevant, under the international agreements referred to in this Chapter.

## **Article 11.4. Multilateral Environmental Agreements**

1. The Parties reaffirm their adherence to the principles reflected in the international environmental instruments referred to in Article 11.1.
2. The Parties reaffirm their commitment to implement the multilateral environmental agreements to which they are a party.

### **Article 11.5. Climate Change**

1. The Parties recognise the importance of achieving the objectives and goals of the United Nations Framework Convention on Climate Change, done at New York on 09 May 1992 (hereinafter referred to as "UNFCCC") and the Paris Agreement, done at Paris on 12 December 2015, in order to address the urgent threat of climate change, based on best available science and reflecting the principles of the UNFCCC and the Paris Agreement, including equity and the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances.
2. The Parties reaffirm their commitment to implement their respective obligations and commitments under the UNFCCC and the Paris Agreement.
3. Pursuant to paragraph 1, the Parties shall endeavour to cooperate bilaterally, and in other fora, as appropriate.

### **Article 11.6. International Labour Organisation Standards**

1. The Parties, in accordance with their obligations as members of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work, commit to respect, promote and realise, in good faith, the fundamental principles and rights at work embodied in the fundamental ILO Conventions, namely:
  - (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour;
  - (d) the elimination of discrimination in respect of employment and occupation; and
  - (e) a safe and healthy working environment.
2. The Parties affirm their commitment to effectively implement in their laws and practices the ILO Conventions which they have respectively ratified. The Parties will make efforts towards ratifying the fundamental ILO Conventions in a promotional and flexible manner without time limits and according to the ILO Declaration on Social Justice for a Fair Globalization of 2008.

### **Article 11.7. Cooperation, Information Exchange and Experience Sharing on Trade and Sustainable Development**

In view of the objectives set out in Article 11.1, the Parties agree to enhance their cooperation in exchanging information and experiences in areas of mutual interest, such as:

- (a) best practices relating to corporate social responsibility;
- (b) relevant aspects of the ILO Decent Work Agenda, such as labour statistics, and labour market developments;
- (c) identifying and addressing skill gaps;
- (d) human resources development, lifelong learning, skilling, upskilling and re-skilling to facilitate a just transition and decent work in accordance with the ILO Guidelines on a Just Transition towards environmentally sustainable economies and societies for all adopted by the Tripartite Meeting of Experts in Geneva on 5 to 9 October 2015;
- (e) best practices in promoting integrated and sustainable management of natural resources and ecosystems, including conservation and sustainable use of biodiversity;
- (f) best practices to promote sustainable consumption and production patterns;
- (g) cooperation between enterprises in relation to goods, services and technologies that contribute to sustainable

development;

(h) policy frameworks conducive to the deployment of best available technologies for sustainable development, including with regard to the promotion of eco-innovation, research activities, dissemination of results, and efforts to ensure that such technologies are available in public domain and are accessible at affordable prices; or

@ regulatory frameworks to promote sustainable renewable energy and resource and energy efficient products and services.

## **Article 11.8. Cooperation In International Fora**

The Parties shall strive to strengthen their cooperation on labour and environmental issues of mutual interest in relevant bilateral, regional and multilateral fora in which they participate.

## **Article 11.9. Contact Points**

1. Each Party shall designate a contact point responsible for coordinating implementation of this Chapter.
2. Each Party shall provide the other Parties with the contact details of its contact points and shall promptly notify the other Parties of any change in contact point.

## **Article 11.10. Security Exception**

Nothing in this Chapter shall be construed to prevent the Parties from taking any action or not disclosing any information that it considers necessary for the protection of its essential domestic security interests.

## **Article 11.11. Non-Application of Dispute Settlement**

No Party shall have recourse to Chapter 12 (Dispute Settlement) for any matter arising under this chapter.

## **Article 11.12. Sub-Committee on Sustainability**

1. The Parties hereby establish a Sub-Committee on Sustainability (hereinafter referred to as "Sustainability Sub-Committee"), composed of government representatives of the Parties.
2. The Sustainability Sub-Committee shall meet within one year of the entry into force of this Agreement, and thereafter as mutually agreed.
3. The Sustainability Sub-Committee shall:
  - (a) monitor and review the implementation and operation of this Chapter;
  - (b) discuss, facilitate, and monitor areas and means of cooperation and supportive measures, as appropriate, under this Chapter;
  - (c) report to the Joint Committee with respect to its activities, as mutually agreed; and
  - (d) perform any other functions the Parties may decide.
4. The Sustainability Sub-Committee shall be chaired jointly by an EFTA State and India and may make recommendations, or refer matters, by consensus, to the Joint Committee.

## **Article 11.13. Consultations**

1. The Parties shall at all times endeavour to make every effort through cooperation, dialogue, consultations and exchange of information to address any matter arising under this Chapter.
2. A Party may request consultations (hereinafter referred to as the "requesting party") with another Party (hereinafter referred to as the "responding party") regarding any matter arising under this Chapter by delivering a written request to the responding party's contact point. The requesting party shall set out the reasons for the request and state the matter at issue, to enable the responding party to respond. The other Parties shall be informed that a request for consultations has been submitted.

3. The responding party shall respond to the request in writing no later than 90 days after the receipt of the request. The period for responding to the request may be extended by a further period of 30 days from the request of the responding party.
4. The requesting party and the responding party (hereinafter referred to as the "consulting parties") shall enter into consultations in good faith. Such consultations shall be held between the appropriate government representatives, as respectively designated by the consulting parties.
5. Unless the consulting parties agree otherwise, the consulting parties shall enter into consultations promptly, and no later than 150 days after the receipt of the request by the responding party.
6. Consultations shall take place in the Joint Committee, unless the consulting parties agree otherwise.
7. The consulting parties may agree to seek advice from any expert or body they deem appropriate, to assist them in the consultations.
8. The consulting parties shall make every effort to arrive at a mutually agreed solution to the matter, which may include appropriate cooperative activities.
9. Consultations may be held in person or by other technological means available.
10. Consultations under this Article, the outcomes, and the positions taken by the Parties during such consultations, shall be confidential. Notwithstanding the preceding sentence, the outcome of these consultations shall be made public unless the consulting parties agree otherwise. Where the outcome of consultations is made public, this shall be through a jointly agreed report.
11. Each Parties shall treat as confidential any information exchanged in the consultations which another Party has designated as confidential.
12. Notwithstanding paragraphs 1 to 11, where the matter arising under this Chapter regards compliance with obligations under a multilateral environmental agreement to which the consulting parties are a party, the requesting party should, where appropriate, address the matter through the consultative procedure or other procedures under that multilateral environmental agreement.

### **Article 11.14. Review**

The Parties shall periodically review this Chapter. Each Party may, as appropriate, take into account views expressed by its relevant stakeholders in relation to such review.

## **Chapter 12. DISPUTE SETTLEMENT**

### **Article 12.1. Scope and Coverage**

1. Unless otherwise specified in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties (11) concerning their rights and obligations under this Agreement.
2. The rules and procedures set out in this Chapter may be waived, varied or modified by mutual agreement between the parties to the dispute.
3. An arbitration panel shall interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law.
4. The rulings of an arbitration panel cannot add to or diminish the rights and obligations provided for in this Agreement.
5. In a situation where a dispute regarding the same matter is covered within the scope of this Agreement and under the WTO Agreement, the complaining Party may select the forum in which to settle the dispute and such forum selected by the complaining Party shall be used to the exclusion of any other forum for settlement of such a dispute. The complaining Party shall be deemed to have selected a forum when it has requested the constitution of an arbitration panel in accordance with Article 12.4 of this Agreement or by a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party, that Party shall notify all other Parties of its intention.

(11) ! For the purposes of this Chapter, the terms "Party", "party to the dispute", "complaining Party" and "Party complained against" can

denote one or more Parties.

## **Article 12.2. Good Offices, Conciliation or Mediation**

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.
2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitration panel appointed under this Chapter.
3. All proceedings under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Chapter or another fora.

## **Article 12.3. Consultations**

1. Each Party shall accord adequate opportunity for consultations regarding any representations made by another Party concerning a dispute referred to in paragraph 1 of Article 12.1.
2. Any request for consultations shall be submitted in writing to the Party complained against and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis of the complaint. The complaining Party shall at the same time notify the other Parties in writing thereof.
3. If a request for consultations is made pursuant to this Article, the Party to which the request is made shall reply to the request within 10 days from the receipt and shall enter into consultations within a period of no more than 30 days from the receipt of the request, with a view to reaching a mutually satisfactory solution. Consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the receipt of the request for consultations.
4. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:
  - (a) provide sufficient information as may be reasonably available at the stage of consultations to enable a full examination of how the measure might affect the operation of this Agreement; and
  - (b) treat as confidential any information exchanged in the consultations which the other Parties have designated as confidential.
5. Consultations shall take place in the Joint Committee, unless the Parties making and receiving the request for consultations agree otherwise. The parties to the dispute shall inform the other Parties of any mutually agreed resolution of the matter.

## **Article 12.4. Establishment of the Arbitration Panel**

1. If the consultations referred to in Article 12.3 fail to settle a dispute within 60 days, or 30 days in relation to urgent matters, including those on perishable goods, or if the Party to which the request is made does not reply within 10 days or does not enter into consultations within 30 days, or within 15 days for urgent matters, from the receipt of the request for consultations by the Party complained against, the dispute may be referred to an arbitration panel by means of a written request from the complaining Party to the Party complained against. A copy of this request shall be communicated to the other Parties so that they may determine whether to participate in the dispute.
2. The request for arbitration shall identify the specific measure at issue and provide a brief summary of the legal basis of the complaint.
3. Unless the parties to the dispute otherwise agree within 20 days from the receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 12.4 and to make findings of law and fact together with the reasons therefor, as well as recommendations, if any, for the resolution of the dispute and the implementation of the ruling."
4. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one Party complained against, a single arbitration panel should whenever feasible be

established to examine complaints relating to the same matter.

5. A Party which is not a party to the dispute shall be entitled, on delivery of a written notice to the parties to the dispute, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the parties to the dispute, attend hearings and make oral statements.

## **Article 12.5. Appointment of Members of the Arbitration Panel**

1. The arbitration panel shall comprise three members.

2. Within 30 days from the receipt of the request pursuant to Article 12.4, each party to the dispute shall appoint one member of the arbitration panel.

3. The two appointed members shall agree on the appointment of the third member within 30 days of the appointment of the second member. The third member, who shall serve as the chair of the arbitration panel, shall not be a national or permanent resident of, nor be employed or previously have been employed by, either party to the dispute. The date of establishment of the arbitration panel shall be the date on which the chair of the arbitration panel is appointed.

4. If all three members have not been appointed within 60 days from the receipt of the notification referred to in paragraph 2, then within a further period of 30 days, the necessary appointments shall be made by the Director-General of the WTO at the request of any party to the dispute. Where the appointment of the members of the arbitration panel by the Director-General of the WTO is not made within the specified period, the parties to the dispute shall within the next 10 days exchange lists comprising four nominees each, in case the chair of the arbitration panel needs to be selected and a list of four nominees for the selection of their member of the arbitration panel, in case a party to the dispute fails to appoint its member of the arbitration panel.

5. The members of the arbitration panel shall then be appointed in the presence of the parties to the dispute by draw of lot from the lists within 10 days from the exchange of their respective lists. If a party to the dispute fails to submit its list of nominees, the members of the arbitration panel shall be appointed by draw of lot from the list already submitted by the other party to the dispute.

6. All members of the arbitration panel shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment. All members shall be independent of, and not be affiliated with or take instructions from, any Party, nor have dealt with the case in any capacity.

7. Any member of the arbitration panel may be challenged if circumstances give rise to justifiable doubts as to the member's objectivity, reliability, sound judgment or independence. If a party to the dispute does not agree with the challenge or the challenged member of the arbitration panel does not withdraw, the party making the challenge may request the Director-General of the WTO to decide on the challenge. If the Director-General of the WTO is unable to act or is a national or permanent resident of a Party, the Party making the challenge may request the Deputy Director-General of the WTO, or the next person in line who is not a national or permanent resident of a Party, to make a decision on the challenge.

8. If a member of the arbitration panel resigns, is removed or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original member. The work of the arbitration panel shall be suspended pending appointment of the successor.

## **Article 12.6. Procedures of the Arbitration Panel**

1. Unless the parties to the dispute otherwise agree, the procedure of the arbitration panel shall be conducted in accordance with the Rules of Procedure set out in Annex 12.A (Rules of Procedure for the Arbitration Panel Proceedings).

2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in the light of the relevant provisions of this Agreement, interpreted in accordance with the rules of interpretation of public international law.

3. The venue for the proceedings of the arbitration panel shall be decided by mutual agreement between the parties to the dispute. If there is no agreement, the venue for the proceedings of the arbitration shall be in the EFTA State complained against, if the complaining Party is India, and in India, if the complaining Party is an EFTA State.

4. The language of any proceeding shall be English.

5. The hearings of the arbitration panel shall be open to the public, if the parties to the dispute mutually agree.

6. There shall be no ex parte communications with the arbitration panel concerning matters under its consideration.
7. A Party's written submissions, written versions of oral statements and responses to questions put by an arbitration panel, shall, at the same time as they are submitted to the arbitration panel, be transmitted by that Party to the other party to the dispute.
8. The Parties shall treat as confidential the information submitted by any other Party to the arbitration panel which that Party has designated as confidential.
9. Decisions of the arbitration panel shall be taken by a majority of its members. Any member may furnish separate opinions on matters not unanimously agreed. The arbitration panel may not disclose which members are associated with majority or minority opinions.

### **Article 12.7. Panel Reports**

1. The arbitration panel should, as a general rule, submit an initial report containing its findings and rulings to the parties to the dispute not later than 90 days from the establishment of the arbitration panel. In no case should it do so later than five months from this date. A party to the dispute may submit written comments to the arbitration panel on its initial report within 14 days from the receipt of the report. The arbitration panel shall take due regard of these comments and present to the parties to the dispute a final report within 30 days from their receipt of the initial report.
2. In cases of urgency, including those involving perishable goods, the arbitration panel shall make every effort to notify its ruling within 60 days from its establishment. Under no circumstances should it take longer than 75 days from its establishment.
3. The final report, as well as any report under Articles 12.9 and 12.10, shall be communicated to the Parties. The reports shall be made public, unless the parties to the dispute decide otherwise.
4. Any decision or ruling of the arbitration panel under any provision of this Chapter shall be final and binding upon the parties to the dispute.

### **Article 12.8. Suspension or Termination of Arbitration Panel Proceedings**

1. Where the parties to the dispute agree, the arbitration panel may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitration panel has been suspended for more than 12 months, the authority of the arbitration panel shall lapse unless the parties to the dispute agree otherwise.
2. The parties to the dispute may agree to terminate the proceedings of an arbitration panel established under this Agreement, in the event that a mutually satisfactory solution to the dispute has been found by jointly notifying the chair of that arbitration panel.
3. Before the arbitration panel submits its final report, it may at any stage of the proceedings propose to the parties to the dispute that the dispute be settled amicably.
4. A complaining Party may withdraw its complaint at any time before the final report is issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

### **Article 12.9. Implementation of Final Panel Report**

1. The Party concerned shall promptly comply with the ruling in the final report. If it is impracticable to comply immediately, the parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 45 days from the issuance of the final report, either party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. (12) The ruling of the arbitration panel should be given within 30 days from that request.
2. The Party concerned shall notify the other party to the dispute of the measure adopted in order to comply with the ruling in the final report, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the other party to the dispute to assess the measure.
3. In case of disagreement as to the existence of a measure complying with the ruling in the final report or to the consistency of that measure with the ruling, such dispute shall be decided by the arbitration panel before compensation can be sought or suspension of benefits can be applied in accordance with Article 12.10. The ruling of the arbitration panel shall

normally be rendered within 60 days.

(12) A guideline for the arbitration panel should be that the reasonable period of time to comply with its ruling should not exceed 15 months from the date of notification of the ruling.

## **Article 12.10. Compensation and Suspension of Benefits**

1. If the Party complained against does not comply with either of the rulings of the arbitration panel referred to in Article 12.9, or notifies the complaining Party that it does not intend to comply with the final report, that Party shall, upon request by the complaining Party, enter into consultations with a view to agreeing on mutually acceptable compensation. If no such agreement has been reached within 20 days from the date of the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to those affected by the measure that the arbitration panel has found to be inconsistent with this Agreement.
2. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to be inconsistent with this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.
3. The complaining Party shall notify the other party to the dispute of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.
4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the parties to the dispute have resolved the dispute otherwise.
5. Upon request of a party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from that request.
6. Unless otherwise specified in this Agreement, the dispute settlement chapter may be invoked in respect of measures affecting the observance of this Agreement taken by the regional and local governments or authorities of the Parties. When the arbitration panel has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of benefits apply in cases where it has not been possible to secure such observance.

## **Article 12.11. Other Provisions**

1. Whenever possible, the arbitration panel referred to in Articles 12.9 and 12.10 shall comprise the same arbitrators who issued the final report. If a member of the original arbitration panel is unavailable, the appointment of a replacement arbitrator shall be conducted in accordance with the selection procedure for the original arbitrators.
2. Each party to the dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs. The costs of the chair of the arbitration panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the parties to the dispute.
3. All time frames stipulated in this Chapter may be reduced, waived or extended by mutual agreement of the parties to the dispute.

## **Article 12. Contact Points**

Each Party shall designate contact points in order to facilitate communications between the Parties on matters covered by this Chapter and the rules contained in Annex 12.A (Rules of Procedure for the Arbitration Panel Proceedings) and shall provide details of such contact points to the other Parties. The Parties shall notify each other promptly of any changes.



## **Chapter 13. INSTITUTIONAL PROVISIONS**

### **Article 13.1. The Joint Committee**

1. The Parties hereby establish the Joint EFTA-India Committee comprising representatives of each Party. The Parties shall be represented by senior government officials delegated by them for this purpose.
2. The Joint Committee shall:
  - (a) supervise and review the implementation of this Agreement;
  - (b) consider the possibility of further removal of barriers to trade and other restrictive measures concerning trade between the EFTA States and India;
  - (c) oversee the further elaboration of this Agreement;
  - (d) supervise the work of all sub-committees and working groups established under this Agreement;
  - (e) endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement; and
  - (f) consider any other matter that may affect the operation of this Agreement.
3. The Joint Committee may decide to set up such sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks. Except where specifically provided for in this Agreement, the sub-committees and working groups shall work under a mandate established by the Joint Committee.
4. The Joint Committee may take decisions as provided for in this Agreement. On all matters related to this Agreement the Joint Committee may make recommendations.
5. The Joint Committee shall take decisions and make recommendations by consensus.
6. The Joint Committee shall meet within one year from the entry into force of this Agreement. Thereafter, it shall meet whenever necessary but normally once every two years. The regular meetings of the Joint Committee shall be chaired jointly by one of the EFTA States and India. The Joint Committee shall establish its rules of procedure.
7. A Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days from receipt of the request, unless the Parties agree otherwise.

### **Article 13.2. Contact Points**

Upon entry into force of this Agreement, each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement and shall promptly notify the other Parties of any change in contact point.

## **Chapter 14. FINAL PROVISIONS**

### **Article 14.1. Fulfilment of Obligations**

The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement.

### **Article 14.2. Annexes, Appendices and Footnotes**

The Annexes to this Agreement, including their Appendices, and footnotes are an integral part thereof.

### **Article 14.3. Review Clause**

1. Two years after the entry into force of this Agreement, the Parties shall review this Agreement with a view to furthering its objectives. Thereafter, the Parties shall conduct biennial reviews as considered mutually appropriate.
2. If after the date of entry into force of this Agreement a Party concludes an agreement notified under Article XXIV of the GATT 1994 or Article V of the GATS, it shall, upon request from another Party, enter into negotiations to consider further

developing and deepening the cooperation under this Agreement. Any such incorporation shall be based on the principle of reciprocity, and maintain the overall balance of commitments undertaken by each Party under this Agreement.

## **Article 14.4. Amendments**

1. Any Party may submit proposals for amendments to this Agreement. Any such proposal shall be submitted to the Joint Committee for consideration and recommendation.
2. Amendments to this Agreement, as recommended by the Joint Committee, shall be submitted to the Parties for ratification, acceptance or approval in accordance with their domestic legal requirements.
3. Unless otherwise agreed by the Parties, amendments shall enter into force on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval.
4. Notwithstanding paragraphs 2 and 3, amendments relating only to the following Annexes, Appendices and Articles may be made by the Joint Committee through adoption of a decision:
  - (a) paragraph 2 of Article 2.12;
  - (b) paragraph 2 of Article 4.15;
  - (c) paragraph 2 of Article 5.14;
  - (d) paragraph 3 of Article 11.12;
  - (e) paragraph 2 of Article 23 in Annex 2.A (Rules of Origin);
  - (f) Appendix 2.A.1 (Product Specific Rules of Origin) to Appendix 2.A (Rules of Origin);
  - (g) Appendix 2.A.2 (Origin Declaration) to Appendix 2.A (Rules of Origin);
  - (h) Appendix 2.A.3 (Origin Certificate) to Appendix 2.A (Rules of Origin);
  - (i) Appendix 2.A.4 (Movement Certificate EUR.1) to Appendix 2.A (Rules of Origin);
  - (j) paragraph 2 of Article 19 in Annex 2.B (Trade Facilitation); and
  - (k) Annex 12.A (Rules of Procedures for the Arbitration Panel Proceedings).
5. The text of the amendments, the instruments of ratification, acceptance or approval, and decision of the Joint Committee referred to in paragraph 4 shall be deposited with the Depository.

## **Article 14.5. Accession**

1. Any state becoming a member of the European Free Trade Association may accede to this Agreement on terms and conditions to be agreed upon by the Parties and the acceding state. The instrument of accession shall be submitted to the Parties and the acceding state for ratification, acceptance or approval in accordance with their respective legal requirements. The instrument of accession and the instruments of ratification, acceptance or approval shall be deposited with the Depository.
2. In relation to an acceding state, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of accession, or the approval of the terms of accession by the existing Parties, whichever is later.

## **Article 14.6. Withdrawal and Expiration**

1. Each Party may withdraw from this Agreement by means of a written notification to the Depository. The withdrawal shall take effect six months after the date on which the notification is received by the Depository.
2. If India withdraws, this Agreement shall expire when its withdrawal becomes effective.
3. Any EFTA State which withdraws from the Convention establishing the European Free Trade Association shall ipso facto on the same day as the withdrawal takes effect cease to be a Party to this Agreement. A copy of the notification of withdrawal from the Convention shall promptly be submitted to the other Parties.
4. If one of the EFTA States withdraws from this Agreement, a meeting of the remaining Parties shall be convened to discuss

the issue of the continued existence of this Agreement.

## **Article 14.7. Entry Into Force**

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective legal requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.
2. If its respective legal requirements permit, any EFTA State or India may apply this Agreement provisionally, pending its entry into force. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.
3. This Agreement shall enter into force on the first day of the third month following the date on which India and all EFTA States have deposited their instrument of ratification, acceptance or approval with, or notified provisional application to, the Depositary.

## **Article 14.8. Depositary**

The Government of Norway shall act as Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

Done at New Delhi, India this 10th day of March in 2024, in two originals in the English language. One original shall be deposited with the Government of Norway. The Depositary shall transmit certified copies to all the Parties.

For the Government of Iceland

Bjarni Benediktsson

Minister for Foreign Affairs

For the Government of the Republic of India

Piyush Goyal

Minister of Commerce and Industry

For the Government of the Principality of Liechtenstein

Dominique Hasler

Minister of Foreign Affairs, Education and Sport

For the Government of the Kingdom of Norway

Jan Christian Vestre

Minister of Trade and Industry

For the Government of the Swiss Confederation

Guy Parmelin Federal Councillor, Head of the Federal Department of Economic Affairs, Education and Research

## **ANNEX 7.A. MANDATE OF THE SUB-COMMITTEE ON INVESTMENT PROMOTION AND COOPERATION**

1. The functions of the Investment Sub-Committee shall be to:
  - (a) oversee, review and monitor the implementation of Chapter 7 (Investment Promotion and Cooperation) of the Agreement;
  - (b) discuss additional opportunities for promotion and facilitation of investments and technology collaboration;

- (c) engage with the private sector and other stakeholders on the additional promotion of investment and on technology collaboration;
  - (d) seek to resolve any issues or differences concerning investments or technology collaboration or any other matters in Chapter 7 (Investment Promotion and Cooperation) of the Agreement;
  - (e) identify cooperation interests and define, coordinate and facilitate, as appropriate, cooperation activities pursuant to Article 7.3 of the Agreement;
  - (f) exchange information, review developments and examine possibilities for improvements with a view to further promote and facilitate investment under the Agreement;
  - (g) report and make recommendations to the Joint Committee, as necessary; and
  - (h) consider any issues regarding investment opportunities that are referred to it by the Joint Committee.
2. No later than 120 days after its first meeting, the Investment Sub-Committee shall establish the working procedures to govern its functioning and procedures for realising the shared objectives and outcomes specified under Chapter 7 (Investment Promotion and Cooperation) of the Agreement.
  3. The Investment Sub-Committee shall meet within 1 year of the entry into force of the Agreement, to the extent possible concurrently with the meeting of the Joint Committee. Thereafter, it shall meet whenever necessary but normally once every 2 years, preferably in conjunction with the meetings of the Joint Committee. The Investment Sub-Committee shall meet either physically or through electronic videoconferencing. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Investment Sub-Committee be held. Such a meeting shall take place within 30 days of receipt of the request, unless the Parties agree otherwise.
  4. The meetings of the Investment Sub-Committee shall be chaired jointly by one of the EFTA States and India.
  5. The Investment Sub-Committee shall act by consensus.
  6. In performing its duties, the Investment Sub-Committee may work with other committees and subsidiary bodies established under the Agreement.
  7. The Investment Sub-Committee may invite private sector entities, international economic organisations, non-governmental organisations and other relevant stakeholders, as appropriate, to assist with the development and implementation of cooperation activities pursuant to Article 7.3 of the Agreement.

## **ANNEX 12.A. RULES OF PROCEDURE FOR THE ARBITRATION PANEL PROCEEDINGS**

### **Section A. ARBITRATORS**

#### **1. Self-Disclosure Obligations for Candidates**

A candidate shall disclose in writing to the parties to the dispute any interest, relationship or matter that is likely to affect or give rise to justifiable doubts as to the candidate's independence or impartiality including relevant financial, business, professional, family, personal or social relationships or responsibilities. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

#### **2. Standards of Conduct**

1. Upon selection, an arbitrator shall perform its duties thoroughly and expeditiously, and with fairness and diligence, throughout the course of the arbitration panel proceedings.
2. An arbitrator shall consider only those issues that are raised in the proceedings and that are necessary for a ruling and shall not delegate this duty to any other person.
3. An arbitrator shall be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be, or appear to be, influenced by self-interest, including by financial, business, professional, family, personal or social relationships or responsibilities, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
4. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or

appear to interfere, with the proper performance of his or her duties.

5. Once appointed and throughout the arbitration panel proceedings, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to under Article 1 and shall disclose them in writing to the parties to the dispute.

6. Any party to the dispute which possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by an arbitrator which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time submit such evidence to the arbitration panel and the parties to the dispute in a written statement specifying the relevant facts and circumstances.

7. The arbitration panel shall take all appropriate steps to ensure that their assistants and staff are aware of, and comply with Article 1 and this Article.

## **Section B. PROCEEDINGS**

### **3. Operation of Arbitration Panel**

1. The chair of the arbitration panel shall preside at all of its meetings. An arbitration panel may delegate to the chair of the arbitration panel the authority to make administrative and procedural decisions related to the arbitration panel proceedings. The chair of the arbitration panel shall be responsible for organising the proceedings unless otherwise agreed by the parties to the dispute.

2. Except as otherwise provided in these rules or in Chapter 12 (Dispute Settlement), the arbitration panel may conduct its activities by any means, including telephone, video conferencing or e-mails.

3. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants, administrative staff, interpreters and translators to be present during such deliberations.

4. The drafting of any decision or ruling shall remain the exclusive responsibility of the arbitration panel.

5. Where a procedural question arises that is not covered by these rules or Chapter 12 (Dispute Settlement), an arbitration panel may, after consultation with the parties to the dispute, adopt an appropriate procedure that is consistent with the Agreement.

6. Unless otherwise agreed by the parties to the dispute, an arbitration panel may, in consultation with the parties to the dispute, modify any time period established pursuant to Chapter 12 (Dispute Settlement) and these rules and make such other procedural or administrative adjustments as may be required in the arbitration panel proceedings. Prior to such consultation with the parties to the dispute, the arbitration panel shall inform them of the reasons for the intended modification or adjustment with an indication of the period or adjustment needed.

### **4. Commencing the Arbitration**

1. Unless the parties to the dispute otherwise agree, they shall meet with the arbitration panel within 10 days following the establishment of the arbitration panel in order to discuss such matters pertaining to the arbitration panel proceedings as the parties to the dispute or the arbitration panel deem appropriate, including the administration of and the timetable for the arbitration panel proceedings, procedures for the hearing and the remuneration and expenses that shall be paid to the chair of the arbitration panel.

2. The arbitration panel shall, as soon as practicable and whenever possible within five days after the meeting with the parties to the dispute, determine the timetable for the arbitration panel proceedings.

3. The arbitration panel shall keep a record and render a final account of all its expenses incurred in connection with the proceedings, including those paid to their assistants, or other individuals that it retains in consultation with the parties to the dispute.

### **5. Written Submissions and Hearings**

1. The complaining Party shall deliver its initial written submission no later than 15 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 25 days after the date of delivery of the initial written submission.

2. Within 15 days after the date of the hearing, each party to the dispute may deliver a rebuttal submission and any supplementary written statement responding to any matter that arose during the hearing.
3. Each party to the dispute shall have the right to at least one hearing before the panel. The arbitration panel may decide to convene additional hearings.
4. Unless the parties to the dispute agree otherwise, the chair of the arbitration panel shall determine the date and time of the hearing in consultation with the parties to the dispute and the other members of the arbitration panel. The parties to the dispute shall be notified in writing thereof.
5. All arbitrators shall be present at all hearings.
6. No later than two days before the date of a hearing, each party to the dispute shall deliver to the other party to the dispute and the arbitration panel a list of the names of its representatives or advisers who will be attending the hearing together with a list of any witnesses that will participate.
7. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:
  - (a) representatives of a party to the dispute, meaning any employee or person appointed for the purpose of arbitration proceedings by a party to the dispute; and
  - (b) necessary personnel to assist in the arbitration panel proceedings, including staff, interpreters, translators, court reporters and arbitrators's assistants.
8. The hearings shall be so conducted that the complaining Party and the Party complained against are afforded equal time.
9. The arbitration panel shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the parties to the dispute.

## **6. No Ex Parte Communication**

1. The arbitration panel shall not meet or discuss matters under consideration with a party to the dispute in the absence of the other party to the dispute.
2. No arbitrator shall discuss matters under consideration with any or all parties to the dispute in the absence of the other arbitrators.

## **7. Questions In Writing**

1. The arbitration panel may at any time during the arbitration panel proceedings address questions in writing to the parties to the dispute. Each party to the dispute shall receive a copy of any questions put forward by the arbitration panel, and the written responses thereto.
2. The party to the dispute that is not the addressee of the questions shall be given the opportunity to provide written comments on the reply of the other party to the dispute within ten days after the date of receipt.

## **8. Arbitrators' Resignation, Removal or Inability to Act**

If an arbitrator resigns, is removed or is unable to act, the arbitration panel shall, after the appointment of a new arbitrator and after consulting the parties to the dispute, decide on any necessary modifications to their working procedures or timetable, including whether a hearing should be repeated in whole or in part.

## **Section C. GENERAL PROVISIONS**

### **9. Notifications**

1. A written submission, request, notice or other document shall be considered received when it has been delivered against receipt, registered post, courier, facsimile, electronic transmission, or any other means of communication that provides a record of the sending thereof.
2. A Party's written communications shall, at the same time as it is submitted to the arbitration panel, be transmitted by that Party to the other party to the dispute. A copy of the written communication shall be provided in electronic format.

3. Minor errors of a clerical nature in any written submission, request, notice or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

## **10. Confidentiality**

1. The parties to the dispute, the arbitrators and any other individuals involved in the arbitration proceedings shall treat as confidential any information submitted to the arbitration panel and designated as confidential.

2. During open hearings and where a party to the dispute runs the risk of disclosing confidential information, adequate measures shall be adopted by the arbitration panel to maintain the confidentiality of such information.

3. Where a party to the dispute submits a confidential version of its written submissions to the arbitration panel it shall, at the request of the other party to the dispute, also provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than 15 days after the hearings.

4. Nothing in these rules shall preclude any party to the dispute from disclosing statements of its own positions to the public.

## **11. Third Party Participation**

These rules shall apply mutatis mutandis to any Party participating in the arbitration panel proceedings pursuant to paragraph 5 of Article 12.4 of the Agreement, unless otherwise specified in the Agreement or these rules.

## **12. Language**

1. The working language of the dispute settlement proceedings shall be English.

2. Written submissions, documents, oral arguments or presentations at the hearings, initial and final reports of the arbitration panel, as well as all other written or oral communications between Parties and the arbitration panel, shall be in the working language.

## **13. Calculation of Time Periods**

1. All time periods laid down in Chapter 12 (Dispute Settlement) and these rules shall be calculated from the day following the day when the communication is received. If the last day of such period is an official holiday or a non-working day in the Party to which the communication is addressed, the period is extended to the next working day. The parties to the dispute shall inform each other of their respective official holidays and non-working days when commencing the arbitration.

2. Where a party to the dispute receives a document on a date other than the date on which the same document is received by the other party to the dispute, a time period depending on such receipt shall be calculated from the later date.

## **14. Experts**

At the request of a party to the dispute or on its own initiative, the arbitration panel may seek information and technical advice from any individual or body which it deems appropriate and may consult with the parties to the dispute prior to seeking such information and advice. The parties to the dispute shall be informed in writing thereof. Any information or technical advice so obtained shall be submitted to the parties to the dispute, who shall be offered the opportunity to comment.